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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 29

MAGNOLIA PETROLEUM COMPANY, ET AL.,
PETITIONERS,

vs.

SULLIVAN H. HUNT

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED MARCH 29, 1943.

CERTIORARI GRANTED MAY 3, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

MAGNOLIA PETROLEUM CORPORATION, ET AL., PETITIONERS,

vs.

SULLIVAN H. HUNT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT

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[fol. 1]

IN THE DISTRICT COURT FOR THE PARISH OF CALCASIEU, STATE OF LOUISIANA

No. 20,981

SULLIVAN H. HUNT

vs.

MAGNOLIA PETROLEUM CORPORATION, et al.

ORIGINAL PETITION

To the Honorable, the Judges of said Court:

The petition of Sullivan H. Hunt, a resident and citizen of the Parish of Calcasieu, Louisiana, with respect, represents:

1

That the Magnolia Petroleum Corporation is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its domicile at allas, Texas; that the said corporation being duly authorized to do business within the State of Louisiana.

2

That the Safety Casualty Company is a foreign insurance corporation organized and existing under and by virtue of the laws of the State of Texas, with its domicile at Dallas, Texas, and is likewise duly authorized to do business within the State of Louisiana.

3

That the said Magnolia Petroleum Corporation and the Safety Casualty Company are justly and truly indebted unto your petitioner, jointly, individually and in solido in the full and principal sum of Eight Thousand Dollars ($8,000.00), payable in four hundred (400) equal weekly installments of Twenty Dollars ($20.00) each, beginning on the 25th day of July, 1939, subject to a credit of One Thou-[fol. 2] sand Four Hundred Seventy Dollars ($1,470.00), (which represents compensation paid from July 25th, 1939, to October 24th, 1940) together with five percent (5%) per

annum interest upon each and every installment from its respective maturity until paid, and for all costs of this suit, for this to-wit:

4

That your petitioner entered into a contract of employment within the State of Louisiana with the Magnolia Petroleum Corporation, and after working for some time in the State of Louisiana, was transferred by his said employer to Kermit, Texas, where he was engaged in doing the work of a "rough-neck" and/or driller's helper, in the working over of an oil well on a lease near Kermit, Texas, when, on the 25th day of July, 1939, a three inch drill-stem fell and struck your petitioner on his head, right arm, back and leg—breaking petitioner's right leg above the knee, and inflicted other injuries upon your petitioner, all of which injuries have resulted in his total and permanent disability.

5

That one of the results of said injury is that your petitioner's right leg is now more than two inches shorter than his left leg.

6

Petitioner further shows that the defendants arbitrarily reduced his compensation from Twenty Dollars ($20.00) to Ten Dollars ($10.00) per week, and sent your petitioner a check for Ten Dollars ($10.00) representing the seventy-fourth week compensation, and since the receipt of said check no further payments have been made to your petitioner of any compensation whatsoever.

[fol. 3]

7

Your petitioner further shows that he is entitled to recover compensation under the laws of the State of Louisiana in the amount of sixty-five percent (65%) of his weekly wage for four hundred (400) weeks, for the reason that the contract of employment was a Louisiana contract.

8

Petitioner further shows that the Magnolia Petroleum Corporation had knowledge of the said accident and that all notices required by law were given.

9

Petitioner further shows that at the time that he was injured, as aforesaid, he was in the employ of the Magnolia Petroleum Corporation and was performing the duties arising out of and incidental to his said employment, which said business and employment is declared to be hazardous by Act 20 of 1914, and amendments.

10

Petitioner further shows that the defendants have paid him compensation for the period, as set out above, totaling One Thousand Four Hundred Seventy Dollars ($1,470.00).

11

Petitioner further shows that at the time that he was injured, he was earning an average weekly wage of Thirty Nine Dollars and Ninety Cents ($39.90).

12

Petitioner further shows that he is not fitted, by training or education, to do any work except hard, strength-taxing, manual labor.

[fol. 4]

13

Petitioner further shows that because of his poverty and want of means he is unable to pay the costs of Court, either in advance or as they accrue, and that it is, therefore, necessary for him to bring and prosecute this suit in forma pauperis.

Wherefore, Premises and Annexed Affidavits being Considered, Petitioner Prays, that he be permitted to file and prosecute this suit in forma pauperis; that the Magnolia Petroleum Corporation be duly served herewith and cited, through its agent for the service of legal process, to appear and an answer this petition, all in the manner and form prescribed by law, and that, after due proceedings had, there be judgment in favor of your petitioner, and against the Magnolia Petroleum Corporation, in the full and principal sum of Eight Thousand Dollars ($8,000.00) payable in four hundred (400) equal weekly installments of Twenty Dollars ($20.00) each, beginning on the 25th day of July, 1939, subject to a credit of One Thousand Four Hundred Seventy Dollars ($1,470.00) compensation already paid, together

with five percent (5%) per annum interest upon each and every installment from its respective maturity until paid, and all costs of this suit.

Petitioner further prays for all orders and decrees necessary in the premises, and for full, general and equitable relief.

By his attorneys, (S.) Hawkins & Tritico.

[fol. 5] AFFIDAVIT IN FORMA PAUPERIS

STATE OF LOUISIANA
Parish of Calcasieu:

Before Me, the undersigned authority, personally came and appeared Sullivan H. Hunt, who, upon oath, says:

That he is the plaintiff in the above and foregoing cause; that he has read the above petition and that all and singular the allegations of fact therein contained are true and correct; that he is citizen of the State of Louisiana; that because of his poverty and want of means he is not able to pay the costs of Court herein, either in advance, or as they accrue, or give bond for the payment of same.

(S.) Sullivan H. Hunt.

Sworn to and subscribed before me at Lake Charles, La., on this 27th day of November, A. D. 1940. (S.) Joe J. Tritico, Notary Public. (Seal.)

STATE OF LOUISIANA
Parish of Calcasieu:

Before Me, the undersigned authority, personally came and appeared W. P. Bordelon, who, upon oath, says:

That he is personaly acquainted with Sullivan H. Hunt, the plaintiff in the above and foregoing suit, and knows him to be a citizen of the State of Louisiana; knows his financial condition and that he firmly believes that the said plaintiff to be unable to pay the costs, either in advance, or as they accrue, or to furnish bond for same.

(S.) W. P. Bordelon.

Sworn to and subscribed before me at Lake Charles, La., on this 27 day of November, A. D. 1940. (S.) Joe J. Tritico, Notary Public. (Seal.)

[fol. 6] IN DISTRICT COURT OF CALCASIEU PARISH

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS—Filed December 18, 1940

The above and foregoing petition and affidavits in compliance with the Practice Act and with Act of 156 of 1912, page 223, and Amendments, which provides for suits in forma pauperis being considered,

Let the plaintiff herein prosecute the above entitled and numbered suit without the previous or current payment of costs or the giving of bond for costs.

It is further ordered that the defendant be served with this order and a copy of the foregoing complaint and that a hearing hereon and hereof be had before this Honorable Court at Lake Charles, Louisiana, on the 20th day of January, 1941, all as provided by Act 20 of 1914 and Amendments.

Thus Done and Ordered at Lake Charles, Louisiana, on this 18 day of December, A. D. 1940.

(S.) John T. Hood, District Judge.

[File endorsement omitted.]

[fol. 7] IN DISTRICT COURT OF CALCASIEU PARISH

[Title omitted]

EXCEPTION OF RES ADJUDICATA—Filed January 6, 1941

Now into Court, through undersigned counsel, comes Magnolia Petroleum Company, made defendant in the above entitled cause, and appearing herein solely for the purpose of this exception and specifically reserving all rights under exceptions heretofore filed, excepts to plaintiff's petition as follows, to-wit:

I

That there was rendered by the Industrial Accident Board of the State of Texas, an award based on the personal application of plaintiff therefor, granting to plaintiff compensation under the laws of the State of Texas for the specific accident and injuries described in plaintiff's peti-

tion filed in the above entitled cause; the said award having been granted against Exceptor and Safety Casualty Company, its insurer in the State of Texas.

II

That the said award of the Industrial Accident Board was rendered on December 3, 1940 and no action has been taken to appeal therefrom within the delays allowed by the laws of the State of Texas; and Exceptor, therefore, avers that the said award represents the final and unappealable decree of the tribunal of original jurisdiction for compensation claims in the State of Texas.

[fol. 8] III

That because of the rendition and finality of the said award of the Industrial Accident Board in Texas, Exceptor specifically pleads that the said award is res adjudicata to this action.

Wherefore, Exceptor prays that this exception be deemed good and sufficient, that after due proceedings had there be judgment herein decreeing that the said award of the Industrial Accident Board of the State of Texas to be res adjudicata and a bar to plaintiff's suit herein and finally that said suit be dismissed at plaintiff's costs.

Exceptor further prays for full, general and equitable relief.

By its attorneys: (S.) Liskow & Lewis.

Duly sworn to by Cullen R. Liskow. Jurat omitted in printing.

[fol. 9] Copy of the foregoing exception has been served on Hawkins & Tritico, attorneys for the plaintiff.

Lake Charles, Louisiana, January 6th, 1941.

(S.) Liskow & Lewis.

[File endorsement omitted.]

[fol. 10] IN DISTRICT COURT OF CALCASIEU PARISH

[Title omitted]

EXCEPTION OF NO RIGHT OF ACTION—Filed January 28, 1941

Now into Court, through undersigned counsel, comes Magnolia Petroleum Company, made defendant in the above entitled cause, and appearing herein solely for the purpose of this exception and specifically reserving all rights under exceptions heretofore filed, excepts to plaintiff's petition as follows, to-wit:

I

That the accident which plaintiff contends has resulted in his disability was suffered by plaintiff in Winkler County, Texas, on May 25, 1939.

II

That at the time of said accident plaintiff had been permanently employed by defendant in the State of Texas and had worked in said State for more than two months.

III

That immediately following the said accident of May 25, 1939 plaintiff filed a claim for compensation with the Industrial Accident Board of the State of Texas to secure payment of compensation in accordance with the laws of said State; the said claim having been filed against defendant herein through its insurer in the State of Texas, Safety Casualty Company.

[fol. 11] IV

That as a result of plaintiff's voluntary action in filing a claim for an award of compensation under the laws of the State of Texas, judgment was rendered by the Industrial Accident Board of said State on December 3, 1940, awarding plaintiff compensation in the amount of $1500.00 for accrued compensation and the further sum of $11.97 per week for an additional period of 125 weeks from October 31, 1940, of which amount defendant and its insurer have paid the sum of Fourteen Hundred Seventy and No/100 ($1470.00) Dollars; and said judgment and award is now final and binding on both plaintiff and defendant herein.

V

That Exceptor hereby specifically pleads the laws of the State of Texas, particularly Title 130, Workmen's Compensation Law, Part 2, Articles 8306 and 8307, Revised Civil Statutes of Texas and all decisions of the appellate courts of the State of Texas construing said statutes to the effect that an award such as that rendered by the Industrial Accident Board on December 3, 1940 in favor of plaintiff, Sullivan H. Hunt, is a final and unappealable decree under the laws of the said State of Texas, that the said decree was rendered by a body of original jurisdiction for compensation claims and finally that the Texas compensation statute is elective rather than compulsory.

VI

That the said award rendered by the Industrial Accident Board of the State of Texas in favor of plaintiff, Sullivan H. Hunt, represents a valid judicial proceeding based on public acts and statutes of the State of Texas, and Exceptor, therefore, especially avers and pleads that full [fol. 12] faith ~~and credit~~ must be given to said public acts and judicial proceedings terminating in the award of December 3, 1940 to the said plaintiff, all in accordance with the provisions of Article 4, Section 1 of the United States Constitution.

VII

That because of the facts hereinabove set forth, plaintiff has no right of action against your Exceptor herein.

Wherefore, Exceptor prays that this exception be deemed good and sufficient, that after due proceedings had there be judgment herein decreeing that the plaintiff, Sullivan H. Hunt, has no right of action against your Exceptor and dismissing plaintiff's suit at his costs.

Exceptor further prays for full, general and equitable relief.

By Its Attorneys: (S.) Liskow & Lewis.

Duly sworn to by Austin W. Lewis. Jurat omitted in printing.

[fol. 13] Copy of the foregoing exception has been served on Hawkins & Tritico, attorneys for the plaintiff.

Lake Charles, Louisiana, January 27, 1941.

(S.) Liskow & Lewis.

[File endorsement omitted.]

[fol. 14] IN DISTRICT COURT OF CALCASIEU PARISH

[Title omitted]

AMENDED EXCEPTION OF RES ADJUDICATA—Filed January 28, 1941

Now into Court, through undersigned counsel, comes Magnolia Petroleum Company, made defendant in the above entitled cause, and appearing herein solely for the purpose of this amended exception and specifically reserving all rights under exceptions heretofore filed, excepts to plaintiff's petition as follows, to-wit:

I

Exceptor reiterates and realleges all of the allegations set forth in Paragraphs I and II of the original exception of res adjudicata filed herein by Exceptor on January 6, 1941.

II

That Exceptor hereby specifically pleads the laws of the State of Texas, particularly Title 130, Workmen's Compensation Law, Part 2, Articles 8306 and 8307, Revised Civil Statutes of Texas, and all decisions of the appellate courts of the State of Texas construing said statutes to the effect that an award such as that rendered by the Industrial Accident Board on December 3, 1940 in favor of plaintiff, Sullivan H. Hunt, is a final and unappealable decree under the laws of the said State of Texas, that the said decree was rendered by a body of original jurisdiction for compensation claims and finally that the Texas compensation statute is elective rather than compulsory.

[fol. 15] III

That the said award rendered by the Industrial Accident Board of the State of Texas in favor of plaintiff, Sullivan H. Hunt, represents a valid judicial proceeding based on public acts and statutes of the State of Texas, and Exceptor, therefore, especially avers and pleads that full faith and credit must be given to said public acts and judicial proceedings terminating in the award of December 3, 1940 to the said plaintiff, all in accordance with the provisions of Article 4 Section 1 of the United States Constitution.

IV

That because of the rendition and finality of the said award of the Industrial Accident Board in Texas and of the faith and credit which must be given to said award under the United States Constitution by this Honorable Court, Exceptor specifically pleads that the said award of December 3, 1940 is res adjudicata to this action.

Wherefore, Exceptor prays that this amended exception be deemed good and sufficient, that after due proceedings had there be judgment herein decreeing the said award of the Industrial Accident Board of the State of Texas to be res adjudicata and a bar to plaintiff's suit herein and finally that said suit be dismissed at plaintiff's costs.

Exceptor further prays for full, general and equitable relief.

By Its Attorneys: (S.) Liskow & Lewis.

[fol. 16] *Duly sworn to by Austin W. Lewis. Jurat omitted in printing.*

Copy of the foregoing exception has been served on Hawkins & Tritico, attorneys for the plaintiff.

Lake Charles, Louisiana, January 27th, 1941.

(S.) Liskow & Lewis.

[File endorsement omitted.]

[fol. 17] In District Court of Calcasieu Parish

[Title omitted]

Statement of Evidence on Trial of Exceptions—Filed March 29, 1941

Appearances:

Hon. G. T. Hawkins, Attorney for Plaintiff.
Hon. A. W. Lewis, Attorney for Defendant.

By Mr. Lewis:

On behalf of the defendant Magnolia Petroleum Corp. we offer in evidence record in the cause entitled Sullivan H. Hunt vs. Magnolia Petroleum Company, No. Y-16695, be-

fore the Industrial Accident Board of the State of Texas, Austin, Texas, the said record having been duly authenti-
[fol. 18] cated in accordance with the Federal Statute, identified as M 1.

We next offer on behalf of Magnolia Petroleum Co. the certificate of Otto Studer, Chairman of the Industrial Accident Board of the State of Texas showing that no appeal has been perfected from the award of the Industrial Accident Board in the case entitled Sullivan H. Hunt vs. Magnolia Petroleum Co., No. Y-16695. This offering is admitted without objection as to its form or authenticity. This offering is identified as M 2.

We next offer in evidence opinion of Raymond M. Myers, an attorney duly qualified to practice in the State of Texas, setting forth certain decisions and Statutes of the State of Texas, the opinion being admitted without objection as to its form and under stipulation that it shall have the same effect as though it had been taken by formal deposition, and as though the Statutes and decisions quoted therein had been introduced in evidence, identified as M 3.

J. C. FIELD, being first duly sworn, testifies as follows:

By Mr. Lewis:

Q. Your name is J. C. Field?
A. Yes, sir.
Q. By whom are you employed, Mr. Field?
A. Magnolia Petroleum Company.
Q. Where, and in what capacity?
[fol. 19] A. In the general office at Dallas, Texas. I have charge of the personnel records of the Company.
Q. I will ask you Mr. Field whether or not you have charge of, and now have in your possession, all records dealing with the employment of the plaintiff, Sullivan H. Hunt, by Magnolia Petroleum Co.?
A. Yes sir.
Q. Will you please outline to the Court the complete record of his employment in the State of Louisiana?
A. The records indicate that he was first employed August 2, 1937, laid off January 15, 1938, re-employed February 10, 1938, laid off December 23, 1938, re-employed January 12, 1939, and laid off February 16, 1939.

Q. Do I understand that the date of February 16, 1939 is the last date that the plaintiff worked for Magnolia Petroleum Company in Louisiana?

A. Yes, sir.

Q. Do your records indicate that that severance from employment at that time was a temporary lay-off or in the nature of a permanent discharge?

By Mr. Hawkins:

We object to that unless this witness has personal knowledge of that. We might state that the records show that the last work in Louisiana was in February. (This is argued by Mr. Lewis.)

By the Court:

Q. Do you know of your own knowledge whether or not the severance in February was permanent or whether it was temporary, of your own knowledge?

[fol. 20] A. No sir, not of my own knowledge.

By Mr. Lewis: I withdraw the question.

Q. I will ask you this, in all cases of temporary lay-offs of the Company employees do they retain all benefits such as the group insurance and similar plans of that nature?

A. Yes sir.

Q. After February 16, 1939 I will ask you whether or not the plaintiff Sullivan H. Hunt surrendered any rights to such benefits?

By Mr. Hawkins: We object unless he knows himself.

By the Court: I think he could testify to that from his records.

A. Yes, sir, the records disclose that he withdrew from the annuities and insurance plan.

By Mr. Lewis:

Q. Is that plan one which is extended to employees during the entire period that they are connected with the Company?

A. Yes sir, it is a voluntary plan, and an employee is eligible after six months of continuous service.

Q. And if he so desires he can participate in that plan as long as he is working for Magnolia Petroleum Company?

A. Yes sir.

By the Court:

Q. He doesn't have to do that if he is employed by the Company?

A. Yes sir.

[fol. 21] Q. If he wants to carry it he can, if he doesn't he doesn't have to?

A. Yes sir.

By Mr. Lewis:

Q. The plaintiff had been carrying that plan?

A. Yes sir.

Q. Was payment made to him for the amount then due to him under that plan?

A. Yes sir.

Q. When did the plaintiff go to work in Texas, and under what circumstances, according to your records?

A. The records indicate that he went to work in Texas March 14, 1939, after having passed a satisfactory medical examination on March 13, 1939.

Q. Where was he employed?

By Mr. Hawkins: We object unless the witness knows personally where he was employed and the manner of his employment.

By Mr. Lewis:

Q. Do your records disclose his place of employment in Texas?

A. Yes sir, it indicates that he was employed at Kermit, Texas.

By Mr. Hawkins:

Q. You mean that is where he worked?

A. Well that indicates that that was where he was employed in Texas, or went to work in Texas.

By Mr. Lewis:

Q. Do your records disclose any change of employment from that time until May 25, 1939, when he was injured?

[fol. 22] A. No sir.

Q. Insofar as your records are concerned Mr. Field, was that final employment of a permanent nature?

A. Yes sir.

Q. Mr. Field do you have in your files receipts and bills showing the medical expense incurred by Magnolia Petroleum Company or its insurer in Texas, Safety Casualty Company, in connection with the accident now sued on?

A. Yes sir.

Q. In order to avoid unnecessary burdening of the record, have you computed the total amount of that expenditure?

A. Yes sir, I have.

Q. Will you give us that please.

A. This is medical and hospital and ambulance service, I believe, totalling $1,095.62.

Q. Mr. Field I will ask you whether or not Safety Casualty Company is the insurer of Magnolia Petroleum Company for compensation claims in the State of Texas?

A. Yes sir, it is.

Q. I will ask you whether or not Safety Casualty Company is the insurer of Magnolia Petroleum Company for compensation claims in the State of Louisiana?

A. No sir, it is not.

Q. Mr. Field is there anything in your records in connection with the final employment of the plaintiff in Texas indicating any plan to retransfer the plaintiff to Louisiana for further employment?

[fol. 23] A. No sir.

By Mr. Hawkins: In paragraph 4 of plaintiff's petition we move to amend the allegation by changing the date of the accident from the 25th. day of July, 1939 to the 25th. day of May.

By the Court: The amendment will be allowed.

By Mr. Hawkins:

Q. Will you please state the date when Mr. Hunt was first employed by the Magnolia Petroleum Company in Louisiana?

A. According to the records it was August 2, 1937.

Q. At that time he was employed down at Johnson's Bayou in Louisiana, was he not?

A. Well it was in what we call our Cameron Meadows District.

Q. That was in Louisiana?

A. Yes.

Q. You know that Mr. Hunt is a resident of Louisiana and lives in Louisiana?

By Mr. Lewis: We object unless he knows of his own knowledge.

By Mr. Hawkins:

Q. Haven't you communicated with him in Louisiana?

A. No I have not.

Q. The Safety Casualty Company was your agent in handling his case?

A. For Magnolia Petroleum Company.

Q. How long did he work for Magnolia Petroleum Company in Johnson's Bayou, and why was his employment terminated, I mean by that why didn't he work just con-

[fol. 24] tinuously on?

A. Well the records indicate that he was injured on August 23, 1937.

Q. His arm was broken?

A. The record I have here doesn't indicate the nature of the injury.

Q. When did he go back to work for the Magnolia after that, and where?

A. Seems to have been November 18, 1937.

Q. Where?

A. In the same District where he was originally employed, our Cameron Meadows District.

Q. Then you can state that the reason he was laid off a while after he first started work was because of an injury he received, that is correct isn't it?

A. I don't know as you would term it a lay-off, he was injured and unable to work.

Q. When he went back to work in the Cameron operations how long did he work.

A. Well with an exception of a day or so perhaps, for one cause or the other, he worked through January 15, 1938.

Q. Now why did he stop working then?

A. Lack of work.

Q. Your company didn't have any further work for him to do?

A. Yes sir.

Q. During all of the time you have just mentioned what particular kind of work was Mr. Hunt doing for your Company?

A. He was classified as a rotary foreman, general work around rotary tools.

[fol. 25] Q. Kind of roughneck work?

A. Yes.

Q. When was the third time he started back to work for your Company, and where?

A. February 10, 1938.

Q. Where was that?

A. That was still at Cameron Meadows.

Q. How long did he work then?

A. We show then to December 23, 1938.

Q. Doing general roughneck work?

A. Yes.

Q. Why did his work stop in December of 1938?

A. On account of slack work, no work available for him.

Q. In these slack periods when you had no work this man would go home and when you needed him again you would get in touch with him and he would go back to work again?

A. That is the general procedure, and I imagine held good in this case.

Q. When was the next time he was called back?

A. January 12, 1939.

Q. Wasn't that when you had work down at Saint Martinville?

A. Well that was in what is called our Lockport District, I don't know whether that is near Saint Martinville.

Q. That was Lockport field. How long did he work at the Lockport field, that is across from Lake Charles?

A. Yes sir, the records indicate on January 16, 1939 he returned to Cameron Meadows District.

[fol. 26] Q. This is because you would want him at these different places, is it not?

A. It could be that, or it could be that where he was working the work had played out and we had activities or other locations where they could give him work there.

Q. After he went to Cameron Meadows from Lockport where was he next given work?

A. Well he was laid off again on January 19 for slack work, and returned on January 29, 1939 in what is called the Lake Charles District, still in Louisiana, but the exact location where he was working I don't know.

Q. When was that he returned to work?

A. That was January 29.

Q. How long did he work after that?

A. To February 16.

Q. Doing the general kind of work he had been doing before?

A. Yes.

Q. February 16 what happened?

A. He was laid off.

Q. Why?

A. Slack work.

Q. Is it not a fact that he was then sent for and told to go to Kermitt, Texas to go to work?

A. I couldn't testify what he was to.

Q. Let me ask you this, doesn't your record show that even during the period that you have covered by your dates so far, that he was once sent to Beaumont where he worked [fol. 27] for a while, and then sent back to Louisiana, Amelia Field at Beaumont, that is before he went to Kermitt?

A. I have a record here where he was carried on the Beaumont drilling tools payroll.

Q. That would cover your operations at Amelia wouldn't it?

A. I think so.

Q. How long did he work over there at Amelia, and what dates?

A. Well it shows here he was transferred from Cameron Meadows on July 1, 1938.

Q. To Texas?

A. That is to the Beaumont payroll.

Q. How long did he stay there before he came back to Louisiana?

A. December 8.

Q. 1938?

A. 1938.

Q. Now all of that indicates that Mr. Hunt held himself subject to your call and orders in his employment?

By Mr. Lewis: Objected to as being argumentive. I don't think the custodian of the records could testify to that.

By the Court: He might say what the records disclose, if anything.

By Mr. Hawkins:

Q. Now I want to ask you this, your records indicate that all of the time that Mr. Hunt was with your Company up until the time he was injured on May 25, 1939 at the Ker-

mitt operations that he was doing the general work of a roughneck?

[fol. 28] A. Yes sir.

Q. Then after he was injured at Kermitt, Texas, is it not a fact that you furnished, or had furnished him, certain blanks to fill out to make claim for compensation with the Industrial Accident Board?

A. I am sorry, to my own knowledge I don't know.

Q. When a man is hurt in Texas his foreman or somebody else in charge hands him some blanks to fill out about his injury?

By Mr. Lewis: We object unless he has some personal knowledge.

By the Court: Unless he knows it of his own knowledge.

By Mr. Hawkins:

Q. You know what the custom is?

A. Yes sir, I know what the custom is.

Q. What is the custom?

A. The custom is that the office in which the employee is employed sends in a report of the accident to the Safety Casualty Company. As soon as compensation accrues the Safety Casualty Company sends the payments, and in lots of cases I don't think the employee ever files a formal notice. If the Safety Casualty Company accepts liability and notifies the Industrial Accident Board of the case and that it is paying compensation.

Q. That is what the Safety Casualty Company did in this case?

By the Court:

Q. Do you know whether that is the way this was handled?

A. No sir.

[fol. 29] Q. That is the custom?

A. Yes sir.

By Mr. Hawkins:

Q. Lots of times the employee doesn't know anything about the details of that?

A. I don't know what the employee does or doesn't know.

Q. I thought you said lots of times they didn't file a formal——

A. That wouldn't necessarily mean that he didn't know.

Q. Now in this case the compensation that was paid Mr. Hunt up until it was stopped was paid by the Safety Casualty Company?

A. Yes sir.

By Mr. Lewis:

Q. Mr. Field just for the purpose of clarifying the record, these layoffs and periods of employment that you listed for the plaintiff in Louisiana on direct examination, that didn't take into consideration accidents that he suffered, that is the actual lay-offs and return to employment is it not?

A. Yes sir.

Q. In connection with any of these lay-offs do your records disclose that the plaintiff ever cashed in on this annuity benefit or this insurance plan?

A. Yes he did after the lay-off of February 16, 1939.

Q. At any time prior to that had he attempted to cash in on this?

A. No sir.

Q. Do your records disclose any other medical examination of this employee except the medical examination mentioned by you when he went to work at Kermitt, Texas?

[fol. 30] A. No sir, it does not, other than the one when he was first employed.

Q. That is when he was originally employed?

A. Yes sir.

Q. He was not re-examined during any of the periods that he returned to work in Louisiana?

A. No sir.

Q. Mr. Field you have testified concerning the custom in Texas of sending in these forms to the Industrial Accident Board, isn't it a fact that the employer or his insurer is required to do that automatically?

A. Yes sir.

Q. Isn't it also true as a matter of custom or of law that where there is any question concerning these payments that the Industrial Accident Board then sends the forms to the employee, if there is anything that the employee has to sign or do?

A. Yes sir.

By the Court:

Q. Mr. Field does the Magnolia Petroleum Company require examinations of their employees regularly at regular intervals?

A. ~~No~~ sir.

Q. But they may require it at any time, is that right?

A. Yes sir.

Q. Well is this particular case,—in other words do you have for instance men who work only in Louisiana, do you ask them sometimes to have physical examinations after they have been employed and after they have worked for the Company a number of years?

A. No sir.

[fol. 31] Q. That has never happened?

A. It did one time, about ten years ago the Company asked all employees to be re-examined.

By Mr. Hawkins:

Q. The Magnolia Petroleum Company has its production operations in Texas, Louisiana and other States, does it not?

A. Yes.

Q. Its operations are extensive both in Texas and Louisiana?

A. Yes.

By Mr. Lewis:

Q. It is a Texas Corporation, is it not?

A. Yes, sir.

C. A. JAMES, being first duly sworn, testifies as follows:

By Mr. Lewis:

Q. By whom are you employed?

A. Magnolia Petroleum Company.

Q. You are in the Lake Charles District?

A. Yes sir.

Q. What is your position?

A. District Chief Clerk.

Q. Are you in charge of the compensation claims and the records pertaining thereto for this District?

A. Yes, sir, I am.

Q. At this time I will ask you about the size and area comprising the Lake Charles District, does it take in the various fields with the exception of the Amelia field, that [fol. 32] were testified to by Mr. Field concerning the plaintiff's employment?

A. Yes sir.

Q. All of the places that the plaintiff worked with that exception were still in the Lake Charles District?

A. That is right, yes sir.

Q. I will ask you whether or not you ever received any claim or any notice that a claim would be made for compensation in Louisiana by this plaintiff until the present suit was filed?

A. No sir.

Q. Mr. James did you have occasion to see and talk with the plaintiff at any time or times after his accident of May 25, 1939, up until this suit was filed?

A. Yes, I have talked to him on numerous occasions.

Q. Did he discuss with you or you with him the fact that he was receiving checks from Safety Casualty Company as Texas compensation?

A. Yes sir.

By Mr. Hawkins: We object to that. We would read into the record that compensation was paid by Safety Casualty Company until they cut it below the amount due under Louisiana law. (This is argued by Mr. Lewis and Mr. Hawkins.)

By the Court: If he told this man he was receiving compensation I think that is admissible.

By Mr. Lewis:

Q. I understood you to testify that he did discuss with you and tell you that he was receiving compensation from [fol. 33] the Safety Casualty Company in Texas?

A. Yes, and I saw the drafts.

Q. Mr. James I will ask you whether or not the lay-off of this plaintiff of February 16, 1939 was permanent in nature insofar as you know personally, or insofar as your records disclose?

By Mr. Hawkins: We object to that. We have no objection to just what the facts were, whether this man was fired or whether the work ran out where he was working.

By the Court: Testify what you know of your own knowledge.

A. Well the man was laid off because of slack work.

By Mr. Lewis:

Q. Was there any indication at that time that he would be re-employed?

A. No, no indication so far as we know, at no time after a man is laid off.

Q. Mr. James when does your Company require a new medical examination of its employees or former employees?

A. After an employee has been off the payroll for 120 consecutive days he loses his seniority.

Q. Is that rule applied if the employee is either permanently laid off or if he is permanently hired again in another State?

A. Yes, that rule then is of no force as far as 120 days is concerned, if a man quits he is ordered to be re-examined when re-entering our employ. If a man quits and is only off a few days and he comes back to work we require him to have a new medical examination, if he quits or resigns.

[fol. 34] Q. Mr. James if this plaintiff had been temporarily laid off and had been re-employed in your District at the same time that he went to work in Kermit, Texas, can you state definitely whether he would have been required to submit to a medical examination?

A. He would not have been required to submit to a medical examination.

Q. Mr. James isn't the Amelia Field in Beaumont in the Lake Charles District?

A. No sir.

Q. Does Safety Casualty Company carry the compensation insurance of Magnolia Petroleum Company in Louisiana?

A. No sir.

By Mr. Hawkins:

Q. Mr. James where is your office?

A. Weber Building.

Q. In Lake Charles?

A. Yes sir.

Q. What is your position with the Magnolia?

A. I am Chief Clerk.

Q. Now Mr. James you were holding that position and working for the Magnolia in 1939, were you not?

A. Yes sir.

Q. Will you tell the Court whether there is any kind of office maintained by Magnolia at Iowa, La.?

A. Yes.

Q. What kind of office is that?

A. Field office.

[fol. 35] Q. All of the time that you have heard and that you know that Mr. Hunt worked for the Magnolia in different places in Louisiana and at Amelia, whenever you got work for him and sent for him he responded and went to work did he not?

A. I couldn't answer that.

Q. Your records show it?

A. Yes.

Q. Do your records show that at any time, even after he last worked for your Company in Saint Martin Parish, do your records show where you discharged him?

A. No sir.

Q. Do they show where he quit?

A. No sir.

Q. Now Mr. James would you be the man who would, when you found out that you needed some additional workmen, to send out and get fellows that were laid off?

A. No- altogether.

Q. You did do that?

A. I have done that.

Q. You did it in the case of Mr. Hunt, sometimes?

A. No sir.

Q. You didn't talk to Mr. Hunt before he went to Kermitt, Texas?

A. No, sir.

Q. The records concerning a man's physical examination, where are they kept in the Lake Charles District?

A. In the field office at Iowa, if he happens to be employed in that area, in Cameron Meadows if he is employed there, or at Lockport, with the originals in the Dallas office.

[fol. 36] Q. If a man would want to go to get a copy of his physical examination that he had in Louisiana before he went to work for your Company, and he worked in this area, he would go to your Iowa office to get same?

A. He would go to the office at which he was employed.

Q. I mean for this section.

A. Not necessarily, because Cameron Meadows — in this Section and Lockport is in this Section, he would go to the office that had jurisdiction over his time.

Q. Where were the records kept of Mr. Hunt?

A. Since he was employed at various places in the District they were at different places.

Q. He could be sent to any one to get these records?

A. Yes sir.

Q. You usually did the sending?

A. No, that was done by his immediate foreman.

Q. Mr. Dick Holt was the tool pusher at Kermitt, Texas, when he went over there?

A. I don't know anything about the Texas District.

Q. Are you able to state, just a few days before Mr. Hunt went to Kermitt, Texas, are you able to state where the records of his physical examination were?

A. Yes, they were at Iowa.

Q. They would have to be transferred from Iowa to Kermitt, Texas, if they were needed at Kermitt?

A. That is right, everything was transferred, all personal records.

[fol. 37] Q. Now after Mr. Hunt was laid off, say at any time during his entire course of employment with your Company, because of shortage of work, you never gave him any indication that you were going to give him employment in the future?

A. No sir.

Q. If you needed him you would send for him?

A. Yes.

Q. And he would respond?

A. Yes, I suppose, I couldn't tell you.

Q. You know that the Safety Casualty Company notified, gave written notice on October 29, 1940 that they suspended payment of Mr. Hunt's compensation?

A. No, I wouldn't know that.

By Mr. Lewis:

Q. Mr. James, Mr. Hawkins was questioning you about this transfer of records from Iowa to Kermitt, Texas. Wouldn't the same transfer have been made if this man had been off for five years, wouldn't you have gotten his last record of employment?

A. Yes.

Q. If he had ever worked for the Company before you would have gotten his record of prior employment?
A. Yes sir.

J. C. FIELD, recalled, testifies as follows:

By Mr. Hawkins:

Q. Mr. Field you are in the department of the Magnolia [fol. 38] Petroleum Company that has something to do with the payment of compensation are you not?
A. No sir.
Q. You have the records?
A. I have the records.
Q. Let me ask you this question, your records show that during the period of employment by your Company of Mr. Hunt, that he worked at Amelia in the Beaumont District. Will you please state to the Court whether or not your Company would have paid him compensation under the Texas law had he been hurt at Amelia?

By Mr. Lewis: Objected to as calling for an opinion of the witness.

By the Court: If you know that then you can answer.

A. I don't know.

By Mr. Hawkins:

Q. Would your Company have reported to the Safety Casualty Company, your insurance carrier?
A. If it happened in Texas I am sure it would be, and also would have been reported to the Workmen's Compensation Department.
Q. Of Texas?
A. No, sir, it handles all States outside of Texas.
Q. Of your Company?
A. Yes sir.

By Mr. Hawkins: On October 23, 1940, the Safety [fol. 39] Casualty Company, which previously had been paying Mr. Hunt compensation at the rate of $20.00 per week, sent him a check for $10.00, advising him that they were reducing his compensation based upon 50 per cent total disability instead of 100 per cent disability. On October 26, 1940, after being consulted by Mr. Hunt after he

received this reduction, we wrote the Safety Casualty Company turning down this $10.00 payment, a letter which we will mark Hunt 1. We wish to file that in evidence. Subsequent to that date an award was made by the Texas Board over there cutting his compensation to $10.00 a week, and payments have been made under that award. That award was made on December 3, 1940. On December 3, 1940, the Industrial Accident Board of Texas rendered an order saying that he was 50 per cent disabled and under that award the Safety Casualty Company has been sending and tendering Mr. Hunt his checks in satisfaction of that award, which have been refused by Mr. Hunt, as was the first check for $10.00.

In conjunction with those admissions which I have just read into the record, we wish to introduce and offer in evidence a letter received by us as attorneys for Mr. Hunt dated October 29, 1940, stating that they were enclosing a form and notice of suspension of compensation, that the compensation was entirely suspended, marked Hunt 2.

[fol: 40] We wish to also offer in evidence a letter received from the Industrial Accident Board to Hawkins & Tritico, acknowledging receipt of a letter written that Board by Hawkins & Tritico, dated December 5, which is already in the record, and we mark this Hunt 3, to which is attached a copy of the award and a notice of the Industrial Accident Board.

That is December 9, 1940.

On behalf of the plaintiff we also offer in evidence a letter dated November 22, 1940, addressed to Mr. Sullivan H. Hunt, Rosepine, La., marked Hunt 5, together with a blank attached thereto on form of the Industrial Accident Board, No. 113, and the postscript attached to that letter.

Sullivan H. Hunt, being first duly sworn, testifies as follows:

By Mr. Hawkins:

Q. Now Mr. Hunt, when you were first employed, before you ever went to work for the Magnolia Petroleum Company, were you examined by a physician in Louisiana?

A. Yes sir.

Q. Where do you live now?
A. At Rosepine, now.
Q. You been living in Louisiana for how long?
A. Thirty years.
Q. You formerly lived where, before you moved to Rosepine, in Louisiana?
[fol. 41] A. Westlake.
Q. What doctor examined you before you went to work the first day for Magnolia?
A. Dr. Holcombe.
Q. Dr. R. G. Holcombe?
A. Yes sir.
Q. You have heard the testimony of the representatives here of Magnolia Petroleum Company about where you worked, that is substantially correct, is it not?
A. Yes.
Q. Were you ever fired after this first time you were employed?
A. No sir.
Q. Did you ever quit working for them?
A. No sir.
Q. When you were first employed where did you go and to whom did you go to get your job?
A. I went to what they call Cameron Meadows, down there, that is when Isaac Ault was tool pusher down there, and he asked me did I ever work derricks, and I told him no sir, not in roughnecking, I had worked derricks as a roustabout, and he told me he would hire me and sent me to Mr. James' office in town and told him to give me the blanks to fill out to be examined by Dr. Holcombe.
Q. Did Dr. Holcombe examine you?
A. Yes.
Q. After that did you go to work?
A. No, I went back to go to work and he said one of the [fol. 42] old men had called that evening that he would be out to go to work that morning.

By Mr. Lewis: That is encumbering the record.

By Mr. Hawkins:

Q. You later went to work?
A. Yes.
Q. A few days later?
A. Yes sir.

Q. Where did you work the last time for Magnolia in Louisiana?

A. At Saint Martinville.

Q. Why did you stop working at Saint Martinville?

A. The work got slack there and there was older men on the job than I was.

Q. Where did you come after your work played out at Saint Martinville?

A. Back to Westlake.

Q. How did you then go back to work for Magnolia, who did you go to, or who came to you?

A. A Magnolia man came to the house and told me if I wanted to go to work to go to Lockport and see Mr. Perkins, and Mr. Perkins told us my papers was at Iowa and told us to go see Mr. James at his office, and Mr. James said he can go to work over there.

Q. Where?

A. At Kermit, Texas, and he sent me to Iowa to get my transfers, the papers I had filled out to be examined.

Q. Did you go to Iowa, and if so who went with you?

[fol. 43] A. Nobody.

Q. Your wife go with you?

A. No sir.

Q. When you went to Iowa did you ask for the papers, or did Mr. James give you a note?

A. No he didn't give me a note.

Q. Who did you talk to at Iowa?

A. Mr. Dan.

Q. In the office?

A. Yes.

Q. Did he give you your examination papers or other papers?

A. He didn't give me my papers, said he didn't have them all fixed up, he give me a slip of paper to Mr. Dick Holt, the tool pusher in Kermit, Texas.

Q. This gentleman didn't give you the papers, but gave you a note to the tool pusher in Kermit, Texas?

A. Yes.

Q. What did that note say?

A. Told him who I was and that I could go to work over there.

Q. Did you take that to Mr. Holt?

A. No sir.

Q. What did the man say about your papers?

A. He said this will get you to work, you don't need your transfer papers.

Q. When you went there did you give that to Mr. Holt?

A. Yes sir.

[fol. 44] Q. What about your examination papers, did he ask for them?

A. Yes sir.

Q. Did you have them?

A. No.

Q. What did he say then?

A. He said you can't go to work until you are examined.

Q. Mr. Holt asked you for your examination papers that you had been sent to get?

A. Yes sir.

Q. How long were you there before they put you to work?

A. About a day and a half or two days.

Q. Will you tell the Court whether or not you then submitted to an examination over there?

A. Yes.

Q. Will you tell the Court about the time you started to work, whether the papers were then brought from Iowa to Kermit?

A. Them papers was sent over there by another Magnolia worker from Saint Martinville.

By Mr. Lewis:

Q. Do you know that personally?

A. No I do not.

By Mr. Lewis: We object to that.

By the Court:

Q. Did you see the papers over there?

A. Yes sir.

[fol. 45] Q. You know they were there but you don't know how they got there?

A. I know how they got there, there was a boy——

By Mr. Hawkins:

Q. Did you see a boy bring them?

A. No.

Q. When the papers got there you had already been examined in Texas and had gone to work?

A. No sir.

Q. When did they get there, before the examination, or after?

A. They got there before the examination.

Q. Did you see them before?

A. No sir.

Q. You don't know that?

A. No sir.

Q. You worked then for Magnolia up until the time you got hurt?

A. Yes sir.

Q. Mr. Hunt did you ever consult an attorney in Texas or Louisiana about your rights, whether they were under the Louisiana or Texas law?

By Mr. Lewis: We object to that.

By the Court: Objection maintained.

By Mr. Hawkins:

Q. Did you know whether you were being paid compensation under the Texas law or under what law?

[fol. 46] A. No sir.

Q. When did you first consult an attorney about your rights for compensation, was it after they cut you down?

A. After they cut my check to $10.00.

Q. You can't do any work?

A. No sir.

Q. Now did you ever ask the Industrial Accident Board of Texas to give you a trial of this case, or anything of that kind?

A. No sir.

Q. Did you go over there and appear before the Board?

A. No sir.

Q. When they wrote you a letter upon which they said send them a doctor's report did you send them a doctor's report?

A. No sir.

Q. After they said your case was fixed for hearing on a certain date did you send any reports in or any doctor's certificate or any witnesses over there?

A. No sir.

Q. What did you do with those papers, and blanks that they sent you to fill in, gave them to who?

A. After I came back over here?

Q. Yes.

A. I gave them to you.

Q. Well Mr. Hunt at the time that you went to work at Kermit did you go to these people and ask them to send you to Texas, or did they send for you and bring you to the office?

[fol. 47] A. This boy that came for me told me I could go to work and that they had looked for me to go to work.

By Mr. Lewis: I think that is repetition.

By Mr. Hawkins:

Q. That all happened in Louisiana?

A. Yes.

Q. When you went to Texas did you do the same character of work in Texas for Magnolia that you were doing in Louisiana?

A. Yes.

By the Court:

Q. Your work in Texas was no more permanent than any of your work had been in Louisiana?

A. Yes sir.

Q. You would work on that job as long as they had one, but when the work got slack you would be laid off just as you were in Louisiana?

A. Yes sir.

Q. You weren't located there permanently?

A. Yes.

Q. It wasn't indicated to you that you would be located there permanently, is that correct?

A. Yes.

By Mr. Lewis:

Q. As a matter of fact, Mr. Hunt, they indicated nothing to you about how long you would work?

A. Yes sir.

[fol. 48] Q. You worked steadily until the time you were hurt from the time you got there?

A. No sir.

Q. How much were you off?

A. About two weeks.

Q. From the time you got there until May 25 when you got hurt, you were off about two weeks?

A. Yes I imagine about two weeks.

Q. When you went out to Texas Mrs. Hunt went out there with you did she not?

A. Yes sir.

Q. She stayed with you out there during the time you were working?

A. Yes sir.

Q. Now Mr. Hunt I hand you herewith a record which has been introduced in evidence as M 1 and which purports to be the proceedings before the Industrial Accident Board in Texas. I show you here a paper dated June 8, 1939, which purports to be signed by Sullivan H. Hunt, of Kermit, Texas. I will ask you to lok that over and tell me whether you not only signed that, but wrote it out in your own handwriting?

A. Yes I signed this down here.

Q. Didn't you also fill this in?

A. My wife did, yes sir, that is the letter there.

Q. That is your original notice of injury to Industrial Accident Board?

A. I believe this is the one they had sent to me in Texas.

[fol. 49] Q. You signed that on June 8, 1939, you were still in Texas at that time were you not?

A. Yes sir.

Q. That is your signature?

A. Yes, Mr. McGee told me and my wife that we would have to sign this before we could get compensation, we didn't know what we were signing.

Q. These papers were sent to you by Industrial Accident Board, were they not?

A. I couldn't say.

Q. I show you a second form in the same record, which is headed claim for compensation for injury, which purports to have been signed by Sullivan Hunt of Kermit, Texas, also on June 8, and ask you whether that is your signature?

A. Yes sir.

Q. I also hand you herewith and show you as a part of the same record a letter dated October 16, 1940 addressed to the State Board of Compensation, Austin, Texas, which

purports to have been signed by Sullivan Hunt. I will ask you whether or not that is your signature?

A. Yes, that is my signature, but this letter that we wrote to the State Board of Compensation we wrote because they had sent me to San Antonio for my leg, they wanted to break it over, we wrote to them and asked them——

By Mr. Lewis: I think the letter is self-explanatory.

Q. Mr. Hunt I think you have testified that you did get this notice which is in the same record, M 1, dated Novem-[fol. 50] ber 19, 1940, from the Industrial Accident Board in Texas, the notice that your case was going to be heard over there?

A. Yes sir.

By Mr. Hawkins:

Q. After you got hurt the 25th of May, 1939 will you tell the Court how long you were confined to the Hospital in Texas?

A. I stayed in the Hospital nine weeks, had a pin through my knee with weights.

Q. That isn't the only hospital you were in?

A. No sir.

By the Court:

Q. You were over there until about the first of August?

A. Yes sir.

By Mr. Lewis:

Q. Mr. Hunt you never did do any work in Louisiana from the date you first worked at Kermit, Texas in 1939?

A. No sir.

By Mr. Hawkins:

Q. Haven't done any work at all since?

A. No sir.

Mrs. Sullivan H. Hunt, being first duly sworn, testifies as follows:

By Mr. Hawkins:

Q. Mrs. Hunt will you state whether or not you were at home in Westlake when a representative of the Magnolia

came to get your husband to put him to work at Kermit, Texas?

A. Yes.

[fol. 51] Q. How long after he was sent for at Westlake was it before he went to Kermit?

A. He left the next day.

Q. Did he also go to Iowa before he went to Kermit?

A. Yes sir.

Q. Did you ride over there with him or go in the office with him?

A. I rode with him but I didn't go in the office.

Q. What place did he go?

A. To the Magnolia field there.

Q. Do you know if before he went to the Magnolia office at Iowa whether he went to see Mr. James at his office?

A. I really couldn't say whether he went.

Q. You were married to your husband during the time he was working for Magnolia?

A. Yes sir.

Q. Were you in Kermit, Texas with him at the time he was injured?

A. Yes.

Q. Where did you get these blanks of the Industrial Accident Board?

A. They were mailed to me.

Q. Mr. Hunt, how many weeks after he was injured was he very bad off?

By Mr. Lewis: We object to that.

By the Court: That form of the question I don't think is proper.

By Mr. Hawkins:

Q. How long was Mr. Hunt actually confined to the Hospital after he was hurt?

[fol. 52] A. He left the Hospital the 25th day of July, 1939.

Q. Been under the doctor's care since, other hospitals after that?

A. Yes sir.

Q. What other hospitals?

A. He came to Lake Charles.

By Mr. Lewis: We object to that.

By the Court: That is immaterial.

By Mr. Hawkins:

Q. Do you know whether or not every time the Magnolia had work for your husband in Louisiana whether he went to work for them?

By Mr. Lewis: We object to that.

By the Court: I doubt that she could testify to that except from hearsay.

By Mr. Hawkins:

Q. You know he worked for Magnolia off and on?

A. Yes sir.

By Mr. Lewis:

Q. You testified you did move to Kermit, Texas with Mr. Hunt?

A. I went with him, as far as moving my furniture, no.

Q. You stayed out there with him during the entire time he was working there?

A. Yes sir.

[fol. 53] Sullivan H. Hunt, recalled, testifies as follows:

By Mr. Hawkins:

Q. You also worked for Magnolia at Saint Martinville. Will you state to the Court how much wage you received per hour there?

A. 95 cents per hour.

Q. When you went to Kermit and started to work there for Magnolia Petroleum Company will you state what your wage was there?

A. 95 cents.

By the Court:

Q. You were doing the same kind of work at both places?

A. Yes sir.

Reporter's Certificate to foregoing transcript omitted in printing.

[File endorsement omitted.]

[fol. 54] IN DISTRICT COURT OF CALCASIEU PARISH

No. 20981

SULLIVAN H. HUNT

vs.

MAGNOLIA PETROLEUM CORP.

OPINION OVERRULING EXCEPTIONS—Filed May 21, 1941

In this case Sullivan Hunt has filed suit under Act 20 of 1914 as amended, against the Magnolia Petroleum Corporation for compensation at the rate of $20.00 per week for 400 weeks, allowing a credit of $1,470.00, the amount of compensation he has already been paid. Defendant filed exceptions in the case, and seriously presents the following: An exception of res adjudicata, an exception of no right of action, an exception to the jurisdiction of the Court, and a plea of estoppel.

Evidence was taken on the trial of the exceptions, which we recount in narrative form.

The plaintiff, a resident of Calcasieu Parish, Louisiana, was employed for two or three years prior to the accident by the defendant, as a laborer, performing the work usually designated around oil fields as roughnecking. The employment was permanent in nature, although the work was not continuous. The evidence shows that Hunt from the time he was first employed by the defendant in August of 1937 until the date of the accident, which occurred May 25, 1939, was not employed by anyone other than the defendant, and that he was subject to the call of the defendant to work at any time that the defendant needed him. From August 2, 1937, the date of the first employment, until May 25, 1939, plaintiff had worked for the defendant in various oil fields [fol. 55] in Louisiana and Texas. Practically all of his work was performed in Louisiana, and his records as an employee of the Company were kept in the Division Office of the Company in Southwest Louisiana.

In February of 1939 the plaintiff had work for the defendant at Kermit, Texas. His assignment to work at Kermit, Texas, was exactly similar to the assignments that he had had to work in various places in Louisiana.

At this point it will be noted that the defendant contends the contract of employment, when plaintiff was assigned to

work at Kermit, Texas was a Texas contract, and was not a contract made and entered into in this State. We cannot agree with this. Hunt had been employed for many months, and insofar as the work permitted he was regularly employed. He had been sent to Texas by the defendant Company at least one time prior to his assignment to Kermit, Texas. Neither plaintiff nor defendant did anything to indicate that the employment in Texas was permanent, any more than it had been in any of the other fields in which plaintiff had worked. There is nothing in the record, and there was no evidence whatsoever, to show that the plaintiff would not be assigned to some field in Louisiana immediately upon completion of the work in Texas, just as he had been assigned to Texas upon completion of the particular job he was working on in Louisiana. There was no new contract entered into before plaintiff left Louisiana to work in Texas, there was no new contract entered into after plaintiff arrived in Kermit, Texas to go to work, and plaintiff performed exactly the same duties in Texas that he had been employed to perform originally in Louisiana.

[fol. 56] On May 25, 1939 after plaintiff had been working for several months he suffered an accidental injury arising out of and in the course of his employment, which he claims has totally and permanently disabled him. At the time of the injury plaintiff's average weekly wage was $39.90, which under the Louisiana Statute would entitle him to compensation at the rate of $20.00 per week for total disability.

On June 8, while plaintiff was still confined in the Hospital, he signed two reports, one headed: "Claim for Compensation for Injury", and the other: "Notice of Injury". These forms have printed on each of them in small type: "Industrial Accident Board, Austin, Texas". Plaintiff's evidence shows that these forms were furnished by his employer, and he was informed that unless they were signed he could not recover compensation. After he had been in the Hospital for several weeks the physician decided that his leg should be re-broken, and because of the painful experience plaintiff had had during a former operation on the injured leg he wished to avoid the operation, and wrote to the Industrial Accident Board of Texas asking their advice as to the course of procedure he should follow.

Plaintiff made no other effort in any way to place his claim in the hands of the Industrial Accident Board, by filing

a petition with the Board, or in any way submitting himself to their jurisdiction.

From the date of the injury until October 18, 1940 the Safety Casualty Company, which is the insurer of the de-
[fol. 57] fendant in the State of Texas, paid plaintiff compensation at the rate of $20.00 per week, the identical amount plaintiff would have received per week for total disability under the Louisiana Statute. Plaintiff was then notified that his compensation payments had been discontinued. On November 2 the Industrial Accident Board, without application from plaintiff, notified the Safety Casualty Company that the case had been set for hearing for Tuesday, November 19, and requested plaintiff to furnish evidence of the injury, all of which plaintiff refused to do. On December 5 plaintiff's Louisiana attorneys notified the Industrial Accident Board of Austin, Texas, that they had been employed, and requested time to investigate the proceeding. On December 9 the Industrial Accident Board forwarded a copy of the award in which they reduced the weekly compensation from $20.00 per week to $11.97 per week for a period of 125 weeks from October 31, 1940 in addition to the compensation already paid. On December 18, 1940 plaintiff filed this suit against the Magnolia Petroleum Corporation and the Safety Casualty Company.

It is admitted that the Safety Casualty Company is not the insurer of the defendant in Louisiana, and therefore plaintiff has abandoned his claim as far as it affects the Safety Casualty Company.

The first exception, and the one most seriously urged by the defendant, is an exception of res adjudicata, defendant's position being that since this case was presented to the Industrial Accident Board of Texas and a final award made
[fol. 58] by the Industrial Accident Board of Texas without any appeal having been taken, the award or judgment is final, and that therefore under Article 4, Section 1 of the Federal Constitution the claim has already been adjudicated and cannot now be considered by another Court, for the reason that full faith and credit must be given the proceeding of the Texas Court.

Defendant cites in support of his petition several cases from other jurisdictions. The case of Martinez vs. W. G. Fritz Company, 165 Atl. 873 in our opinion is not decisive in this case, for the reason that in the Martinez case it is apparent that the plaintiff appeared before the Commis-

sioner and submitted himself to the New York jurisdiction, and that the accident happened in New York. In the opinion it is shown that petitioner does not attack the jurisdiction of the New York Board, and there was a question of fact as to whether the employment contract arose in New Jersey or in New York, however it is not shown in the opinion whether the Courts found as a fact that the employment contract was a New York or a New Jersey contract. In our opinion the difference clearly lies in the proposition that petitioner sought his *own* forum, recovered compensation and retained the same, whereas in the present case plaintiff did not seek the Texas Courts for adjudication of his claim, and in his suit has given defendant credit for all compensation paid to the date of filing his suit.

In the case of DeGay vs. Miller Bros. Construction Company, 173 Atl. 576, the employee was hired in Connecticut and killed while working in Vermont. The suit was brought in Connecticut, and the Vermont Court held that [fol. 59] the widow could not also recover under the laws of the State of Vermont.

Since we have found that the contract of employment in this case was a Louisiana contract, our Courts have held that every such contract embodies in it insofar as it is applicable Act No. 20 of 1914 as amended.

Act No. 20 of 1914 as amended provides that suits under said Act shall be tried in the Parish where the accident occurred, or at the domicile of the employer, and our Courts have repeatedly held that in the event, even upon a joint petition of plaintiff and defendant, the compensation case is submitted to a Court without jurisdiction the same is null and void ab initio, and the plaintiff can disregard the judgment and prosecute his demand in the Court competent to act upon the same. (Citing the case of Nelson vs. Employers Casualty Company, 141 So. 619 and the citations thereunder.)

However defendant contends that under the full faith and credit clause of the Federal Constitution and in accordance with the Martinez case, regardless of the Louisiana Statutory provisions, the award of the Industrial Accident Board of Texas should be final.

We cannot agree with this position. In our opinion Article 4, Section 1 of the Federal Constitution has been interpreted to mean, and in reality does mean, that we shall give full faith and credit to the judgments of the Texas Courts as

we would those of our own State. If however, the judgment of the Texas Court is a nullity under our law, in our opinion the same can be disregarded just as could a judg-
[fol. 60] ment of a Louisiana Court which was a nullity. This is in accord with the opinion of the Supreme Court in the case of White, et al. vs. Davis, 141 So. 6, 174 La. 390; and Evans vs. Evans, 116 So. 831, 166 La. 145.

For these reasons in our opinion the plea of res adjudicata should be, and is hereby overruled.

The exception of no right of action and the exception to the jurisdiction rafione materii are disposed of by our finding of fact that the contract of employment was a Louisiana contract, and governed by the laws of Louisiana. For this reason these exceptions are overruled.

On the plea of estoppel defendant contends that plaintiff is shut off from further procedure by his accepting compensation and the payment of medical fees in excess of $1,000.00 prior to the time this suit was filed, and for the further reason that he acquiesced in the proceedings in Texas.

We do not believe this position to be sound. First, plaintiff gives defendant credit for all compensation that had been paid. Under the Louisiana Statute medical expenses not in excess of $250.00 are provided for. In the event the employer voluntarily pays medical expenses in excess of this amount that is solely a question between the employer and employee, and in the event plaintiff is successful in his suit against the defendant to recover compensation under his Louisiana contract of employment defendant has received credit for all payments made up to
[fol. 61] the time of filing the suit. For this reason in our opinion the plea of estoppel is not good, and is hereby overruled.

Judgment read, rendered and signed in Open Court at Lake Charles, Louisiana, this the 21st day of May, 1941.

(S.) Mark C. Pickrel, District Judge.

[File endorsement omitted.]

[fol. 62] **Transcript of Proceedings Before Industrial Accident Board of Texas**

December 9, 1940.

Y-16695

In re: Sullivan H. Hunt vs. Magnolia Petroleum Company

Hawkins and Tritico, Attorneys, Arcade Theatre Building, Lake Charles, Louisiana

GENTLEMEN:

We have your letter of December 5, 1940. We enclose herewith a copy of the Board's award in the above captioned case, which was entered on date of December 3, 1940.

Yours very truly, Industrial Accident Board, ——, Secretary.

BG/mff. encl.

[fol. 63] Law Offices Hawkins & Tritico

Griffin T. Hawkins. Joseph J. Tritico

Arcade Theatre Bldg. Phone 483. Lake Charles, La.

December 5th, 1940

The Industrial Accident Board, Land Office Bldg., Austin, Texas

Re: Y-16695. Sullivan H. Hunt vs. Magnolia Petroleum Corp.

GENTLEMEN:

Your letter of the 22nd ultimo, addressed to Mr. Hunt, Rosepine, La., with enclosures, has just been turned over to us and in a short while we expect to get in touch with a Texas lawyer and have him assist us in representing Mr. Hunt in his claim for compensation. In the meantime we shall appreciate it if you will defer action until we can secure some Texas attorney to look into this claim, now pending at Austin.

Thanking you very much, we are,

Yours very truly, Hawkins & Tritico, by: /s/ Griffin T. Hawkins.

GTH/mh.

[fol. 64] December 3rd, 1940.

Y-16695

In re Sullivan H. Hunt v. Magnolia Petroleum Company

Safety Casualty Company, Box #900, Dallas, Texas

GENTLEMEN:

Hereto attached is copy of an award made and entered by this Board in the above numbered and entitled cause. This for your information.

Yours very truly, Industrial Accident Board, By ——— ———, Chairman.

P.

Enclosure.

cc—sent Sullivan H. Hunt, Rosepine, La., and J. E. Proctor, Austin, Texas.

[fol. 65] Y-16695

SULLIVAN H. HUNT, Employee,

vs.

MAGNOLIA PETROLEUM COMPANY, Employer

Safety Casualty Company, Insurer

On this 3rd day of December, 1940, after due notice to all parties, came on to be considered by Industrial Accident Board claim for compensation by Sullivan H. Hunt against the Safety Casualty Company, and Board finds and orders:

On May 25th, 1939 Magnolia Petroleum Company was a subscriber to the Employers' Liability Act with insurance carried by Safety Casualty Company. In its employ was Sullivan H. Hunt whose average weekly wage was $39.90; and compensation ratio $20.00 per week under the Act. On said date Sullivan H. Hunt suffered injury in course of employment resulting in his total incapacity for performance of labor from May 25th, 1939 to October 31st, 1940, which have matured in the sum of $1,500.00, and was followed by permanent partial incapacity of 50% as related to permanent and total loss of use of a leg for which he

is entitled to $11.97 per week for remaining period of 125 weeks.

Safety Casualty Company is ordered to pay Sullivan H. Hunt $1,500.00 for accrued compensation for total incapacity, and the further sum of $11.97 per week for remaining period of 125 consecutive weeks from October 31st, 1940 for permanent partial incapacity. Previous payments of compensation, if any, shall be deducted from this award.

When this award has been fully paid, the Safety Casualty Company will stand finally discharged from all liability by reason of this claim for compensation.

[fol. 66]

November 22, 1940.

Y-16695

Sullivan H. Hunt vs. Magnolia Petroleum Company

Hearing Date: November 19, 1940.

Sullivan H. Hunt, Rosepine, Louisiana

Dear Sir:

Your claim was set for hearing before the Board for the date shown above, and with the Board's letter advising you of the setting of your claim, we enclosed form 113, Affidavit and Statements in Support of Claim, for your use in filing evidence in support of your claim.

The Board cannot pass upon your claim and render an award in keeping with the facts until you have filed adequate evidence in support of your claim to serve as a basis for a fair and just award.

We suggest that you complete and file the enclosed Form 113 in accordance with the instructions set out out in the enclosed Form 12, and that you be certain to file in connection therewith a complete and comprehensive medical report signed by a reliable physician in whose judgment you have confidence, setting out in detail your present physical condition and the exact percentage of any temporary, partial or permanent, partial disability which you may have as a result of your injury.

Yours very tru'y, Industrial Accident Board, ——
——, Secretary.

md/ Encl. 12 and 113.

P. S.: All we require in this case is a doctor's report setting forth your condition at the present time. You can

use the part of Form No. 113 enclosed, entitled Statement of Physician, and have a good doctor fill it out. IAB.

[fol. 67] J. E. Proctor's Compensation Claims Service

Y-16695

Sullivan H. Hunt

Memorandum

History:

This claimant sustained an injury of May 25, 1939. He sustained an injury to his right leg to which liability was admitted and the claimant has been paid the sum of $1470.00 and there has been a medical expense of approximately $2000.00 incurred.

Liability:

The principal question before the Board is one of incapacity, and in that connection permit us to direct the Board's attention *the* the medical report of Dr. Amos M. Graves and to the X-ray report of Dr. Milton Davis.

We believe that all the disability is confined to the right leg and the amount of the recovery is in line with Dr. Graves' Report.

Safety Casualty Company, by (S.) J. E. Proctor, Special Representative.

Industrial Accident Board. Received Nov. 19, 1940. State of Texas.

[fol. 68] Nix Hospital X-Ray Laboratory

Dr. Milton Davis, Director

Suite: 1502 Phone: Fanin 2812

Report

San Antonio, Texas, July 26, 1940.

Dr. Amos Graves.
Patient Sullivan H. Hunt.
Date Examined 7/26/40.

Findings:

Right Femur:

Old fracture junction, middle and lower thirds. Very heavy callus present with fracture line still visible. Mal

position. The posterior cortex of proximal fragment is in line with anterior cortex of distal fragment; a slight medial fracture through site of fracture is also present. Four screw holes where plate was removed are visible.

(S.) Milton Davis, M.D.

Received Nov. 13, 1940. L.D.
Industrial Accident Board. Received Nov. 19, 1940. State of Texas.

[fol. 69] Industrial Accident Board. Received Nov. 19, 1940. State of Texas.

Amos Maverick Graves, M.D.

Nix Professional Building

San Antonio, Texas

Nov. 12, 1940.

Re: Sullivan H. Hunt vs. Magnolia Petroleum Co. Age 29 (M). Rosepine, La.

C.C.: Old fracture right leg.

P.H.: In 1937 fractured right arm above elbow. Drew compensation 75 days. No operations. No serious illnesses.

S.H.: Has worked for the Magnolia Petroleum Company since 1937, as roughneck.

Married and has 3 minor children.

P.I.: On May 25, 1937 at Kermit a three inch drill pipe fell on Hunt's right thigh. The femur was fractured in the mid portion, and the patient was therefore taken to the hospital where the fracture was treated by Dr. Robinson with traction and plaster cast and a brace until October. Because of mal-position and inadequate union, Hunt asked that he be permitted to have Dr. Holcomb in Lake Charles operate upon him. In November Dr. Holcomb performed an open reduction and put on a plate. A cast was worn for 6 weeks, and then a walking caliper was used. For the past several months Hunt has been up and about all day, walking without the aid of an apparatus or cane. He does not complain of any pain but states that he still limps a little bit because his knee does not flex fully.

Examination (July 26, 1940): A fairly well developed young man is seen getting about with a slight limp. He recites an intelligent history and appears to be optimistic

about his condition improving sufficiently to permit him to return to his former work.

On general physical examination there is nothing particularly unusual noted except the following:

Lower Extremities: The left lower extremity shows no evidence of injury, and the reflexes are active.

The right lower extremity does not appear deformed on inspection. There is an operative wound that is well healed on the lateral side of the thigh. When the patient stands erect with both feet together, the alignment of the two legs is the same as indicated by the knees being in approximately the same position. On measuring the length of the two extremities, not more than one-fourth to three-eighths of an inch shortening is noted for the right leg. Palpation of the right femur reveals a mass which is heavy callus about the fracture site at the junction of the middle and lower thirds of the femur. Manipulation of the knee joint reveals that extension can be fully carried out but that flexion stops at a right angle. This limitation of flexion is due to prolonged immobilization.

[fol. 70] *X-ray Examination:* The X-rays made before Dr. Holcomb's operation in November show angulation and inadequate callus formation at the site of fracture.

X-rays made July 26, 1940, by the Nix Hospital Laboratory of the right femur show an improvement in alignment and callus formation. The A.P. view shows excellent alignment with a heavy mass of callus formation at the fracture site. The lateral view shows moderate angulation at the site of the fracture, but there is heavy callus present. Four indistinct screw holes seen across the fracture line result from the application and later removal of a plate.

Diagnosis: Old healed fracture of right femur in slight angulation.

Comment: The angulation of the femur at the site of fracture noted in the X-ray is much less distinct clinically. As noted above, the deformity cannot be detected when the patient is standing erect with the feet together. The slight limp which he has, I believe, is due to stiffness of the knee resulting from prolonged immobilization. This stiffness has undoubtedly been improving, and there is no reason why full flexion should not return to this knee from usage in the course of a few months. The slight shortening noted is not in excess of that so frequently seen in those who have never had a fracture.

Even though there is mal-position at the fracture site (22 degrees), it is not sufficient to cause any appreciable defect in function for the leg. I believe Hunt can successfully do the same type of work which he was performing before his injury. However, because of the angulation and the stiffening, disability in the extremity should be estimated at from 35 to 40% of the extremity as a whole.

(S.) Amos M. Graves, Amos Maverick Graves, M.D.

AMG/W.

Received Nov. 13, 1940. L.D.
Industrial Accident Board. Received Nov. 19, 1940. State of Texas.

[fol. 71] Nov. 8, 1940.

Y 16695 Sullivan H. Hunt vs. Magnolia Pet. Co. Ins. Co.
No. 151659

Date of injury: —— —, ——.

Safety Casualty Co., Dallas, Tex.

GENTLEMEN:

This is to notify you that the above styled case has been set for hearing before the Board in Austin, Texas, for Tuesday, Nov. 19, 1940 on its merits, to hear evidence, to determine the liability of the insurance company, and, if liable, the degree of incapacity or disability to the claimant, and all questions before the Board incident to the main issues on which the case is set, including a reduction in the period with a corresponding increase in the rate, hospital, doctors', nurses' and drug bills, and to fix an appropriate award in keeping with all the facts in the case.

If you (and this refers to all parties) know of any outstanding accounts in this case, such as doctors', hospital, drug and nurses' bills, please have itemized statements filed before the date of hearing, showing all services and the charge and date of each. Services must be given separately.

Very truly yours, Industrial Accident Board, (S.) Berniece Grieder, Secretary.

r

cc J. E. Proctor, Austin, Texas.
cc Sullivan H. Hunt, Rosepine, Louisiana.

(Illegible numbers.)

[fol. 72] Form A2-Rev. 4-36.

Order from The Stock Co., Austin, Texas.

Y 16695

Board No. ——.
Insurance Co. No. 151-659.

October 29, 1940.

Industrial Accident Board, Austin, Texas:

You are hereby notified that payment of compensation has been suspended or stopped in the above numbered and styled claim, and that the date of the issuance of the last draft or other evidence of payment is the 23rd day of October, 1940, which paid compensation from October 18, 1940, to 24th day of October, 1940, incl.

The reason payment has been suspended or stopped is as follows:

Total disability has terminated.

Total amount compensation paid $1,470.00.

Weekly rate paid $20.00.

Compensation paid from May 26, 1939 to October 24, 1940, inc. comprising 74 weeks 0 days (73 weeks (a) $20.00 per week and 1 week (a) $10.00 per week).

Safety Casualty Company (Name of Insurance Company), Dallas, Texas (Address).

Sullivan H. Hunt, *Name of Claimant or Beneficiary. Rosepine, Louisiana, Address. May 25, 1939, Date of Injury.

Magnolia Petroleum Company, *Subscriber. Dallas, Texas, Address.

Industrial Accident Board, State of Texas. (Received Oct. 30, 1940.

[fol. 73] October 25, 1940.

Y-16695

In Re: Sullivan H. Hunt vs. Magnolia Petroleum Co. Ins. Co. No. —

Sullivan H. Hunt, Rosepine, Louisiana

Dear Sir:

We are in receipt of your letter of October 16, 1940, which was received in this office on October 21, 1940. If you feel that you should not undergo an additional operation at this time, we suggest that you refuse to do so. If your weekly compensation is suspended thereafter, the Board will be glad to set this case for hearing to determine all the issues involved.

We suggest that you continue to accept weekly compensation as long as it is tendered you by the insurance company.

Very truly yours, Industrial Accident Board, ——
——, Secretary.

BG: ad.

[fol. 74] Y 16695. Industrial Accident Board, State of Texas. Received Oct. 21, 1940.

Rosepine, La., Oct. 16, 1940.

State Board of Compensation, Austin, Texas.

Dear Sirs:

I would like your information about my compensation with Safety Casualty Insurance Company of Dallas, Tex.

On May 25, 1939 my leg was broken while I was on duty with the Magnolia Petroleum Company in Kermit, Texas. My leg was set in the local hospital but was not set correctly. I came to Louisiana and my leg had to be rebroken and operated upon in November of 1939 but now I have been sent to San Antonio to Dr. Amos Graves who tells me that my leg could be helped a little if it was broken again with two (2) more operations performed in the three months required for hospitalization.

What I want to know is, can the Safety Casualty Insurance Company cut off my compensation if I refuse to have my leg broken again?

I had a very hard time overcoming the effects of the ether and gas the last time and I am afraid that I may loose my leg if it is broken again.

If it is permissable, I would like you to tell me what would be a reasonable settlement for my injury.

[fol. 75] My right leg is broken above the knee, the bone is not straight, the knee is stiff and I have a 2 inch shortage in the length of my leg.

I am unable to resume the work (ruffnecking) I was doing when I was injured and they refuse to give me any kind of work at all.

Thank you kindly, (S.) Sullivan Hunt.

Industrial Accident Board, State of Texas. Received Oct. 21, 1940.

FORM No.3 INDUSTRIAL ACCIDENT BOARD, AUSTIN, TEXAS Y 16695

CLAIM FOR COMPENSATION FOR INJURY

IMPORTANT - (This claim must be made out in duplicate and each question carefully and correctly answered within six MONTHS following infliction of injury, one copy to be mailed or delivered to your Employer or his or its Insurance Carrier, and one copy to the Industrial Accident Board at Austin, Texas).

This is to notify you _____ (Name of Employer or Insurance Carrier) that I, SULLIVAN HUNT (First name Here) claim compensation under the Employers' Liability Act for personal injury suffered while in the course of my employment for Magnolia Petroleum Co. (Be careful to give correct name of employer) at Kermit (City or town) Texas. The time of my injury was 4:30 (Hour) o'clock A.M. (a.m. or p.m.) on the 25 day of May, 1939. The place of injury was Thigh -Between-hip-and-knee Walton Lease (Give exact location or name of place where injury occurred).
Cause of injury is three inch drill pipe fell from derrick when elevators came unlatched. State exactly how injury occurred
State part of body injured and nature and extent of injury Broken thigh bone - Simple Fracture (Describe Injury with as much exactness as possible).
Did injury result in loss by amputation of member or part of member? No (Yes or no) If so, name member and describe exact point of amputation _____.
rate of pay on date of injury was $ .95 per hour (Hour, day, week or month)
Hours worked per day 6 (Number) Days worked per week 7 (Number)
Length of time regularly employed in same employment for this employer previous to this injury one year, nine months. Give names and (Years, months or days) post office addresses of all witnesses in support of this claim for compensation _____.
Were you furnished medical attention when injured? Yes. If so, give name and address of doctor C. Robinson at Kermit, Texas (Name of Doctor) (City or town)

WITNESS TO SIGNATURE:

/s/ (Illegible) Robinson, M.D.
(Signature of witness)

(Address of witness)

In giving your address, be careful to give permanent or mail address so you will receive all your mail

/s/ Sullivan Hunt
(Signature of Injured Employee)

(Street and number or R.F.D.)
Kermit, Texas
(City or town)

DATED this 8 day of June, 19____.

ATTENTION: Carefully Read Letter of Instructions Before Filling out Your Claim for Compensation for Injury.

NOTE:-Part II. Employers' Liability Act. Unless the association or subscriber have notice of the injury, no proceeding for compensation for injury under this Act shall be maintained unless a notice of injury shall have been given to the association or subscriber within thirty (30) days after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within six (6) months after the occurrence of the same, or in case of death of the employee or in the event of his physical or mental incapacity within six (6) months after the death or the removal of such physical or mental incapacity. Provided, that for good cause the Board may in meritorious cases waive the strict compliance with the foregoing limitations as to notice and the filing of the claim before the Board.

S3220-339-20m

INDUSTRIAL ACCIDENT BOARD
R E C E I V E D
JUN 14 1939
STATE OF TEXAS

NOTICE OF INJURY
INDUSTRIAL ACCIDENT BOARD
Austin, Texas

IMPORTANT: This notice must be made out in duplicate and each question carefully and correctly answered within THIRTY (30) DAYS following infliction of injury, one copy to be mailed or delivered to your Employer or his or its Insurance Carrier, and one copy to the Industrial Accident Board at Austin, Texas.

This is to notify you _____ (Employer or Insurance Carrier) that I suffered personal injury while in the employ of Magnolia Petroleum Co. (Be careful to give correct name of employer) at Kermit, Texas (City or town), Texas. The time of my injury was 4:30 (Hour) o'clock A.M. (a.m. or p.m.) on 25 day of May (Month), 1939.

The place of injury was Walton Lease on well. (Give exact location or name of place where injury occurred).

Cause of injury a three-inch drill pipe fell from derrick when elevator came unlatched (State exactly how injury occurred).

State part of body injured Right thigh between hip and knee (Indicate right or left in case of hands, etc.)

Nature of injury, as near as possible Broken leg Simple Fracture (Describe injury with as much exactness as possible).

Give names and addresses of eye witnesses to accident Jack Stubbs, Demer Beebe, Donnie Collins Moody. All addresses - Kermit, Texas

Have you returned to work? No. If so, on what date? _____, 19__.

Male Age 29 Single, married, widowed or divorced? Married

Give names, relationship and post office addresses of nearest relatives. Wife, Kermit, Texas; sister - Mrs. L.C.Marshall, Rosepine, La.; Mrs. Margie Schexneider, Lake Charles, La. The Fair, Inc. (sister).

WITNESS TO SIGNATURE:

/s/(Illegible) Robinson, M.D.
/s/ Mrs. Sullivan Hunt
(Signature of witness)
Kermit, Texas
(Address of witness)

In giving your address, be careful to give permanent or mail address so you will receive all your mail.

/s/ Sullivan Hunt
(Signature Injured Employee)
(Street and number or R.F.D.)
Kermit, Texas
(City or town)

Dated this 8 day of May - June, 1939.

ATTENTION: Carefully Read Letter of Instructions before filling out Notice of Injury.

Section 4a, Part II, Employers' Liability Act. --Unless the association or subscriber (employer) have notice of the injury, no proceedings for compensation for injury under this Act shall be maintained unless a notice of injury shall have been given to the association or subscriber (employer) within thirty (30) days after the happening thereof, unless a claim for compensation with respect to such injury shall have been made within six (6) months after the occurrence of same; or, in case of death of the employe or in the event of his physical or mental incapacity within six (6) months after the death or the removal of such physical or mental incapacity. Provided that for good cause the Board may, in meritorious cases, waive the strict compliance with the foregoing limitations as to notice and the filing of the claim before the Board.

S3219-339-20m

INDUSTRIAL ACCIDENT BOARD
R E C E I V E D
JUN 14 1939
STATE OF TEXAS

X-544-4-38 (10-34)

Within 48 hours after any accident to any employee, this form should be completed in triplicate and all copies mailed to SAFETY CASUALTY COMPANY, P.O. BOX 900, DALLAS, TEXAS.

Standard Form for EMPLOYER'S FIRST REPORT OF INJURY

INDUSTRIAL ACCIDENT BOARD STATE OF TEXAS

State's / File: Number / Carrier: CLAIM BLANKS MAILED For / Employer: MAY 30 1939 Carrier's File No. INDUSTRIAL ACCIDENT BOARD (The spaces above not to be filled in by Employee) AUSTIN, TEXAS

Employer

1. Name of Employer Magnolia Petroleum Co.
2. Office address: No. and St. Box 337 City or Town Odessa State Texas
3. Insured by SAFETY CASUALTY CO., P.O. Box 900, Dallas, Texas.
4. Give nature of business (or article manufactured) Petroleum

Time and Place

5. (a) Location of plant or place where accident occurred J.B.W. #-147 (C.O) Winkler County Department Drilling State if employer's premises Yes
   (b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill? ____
6. Date of Injury May 25, 1939 Day of week Thurs. Hour of Day 4:30 A.M.
7. Date disability began May 25, 1939 A.M. A.M. P.M. 8. Was injured paid in full for this day? Yes
9. When did you or foreman first know of injury? May 25, 1939
10. Name of foreman Donnie Collins (Driller) C.E. Hope (Tool Foreman)

Injured Person

11. Name of Injured Sullivan (First Name) H. (Middle Initial) Hunt (Last Name)
12. Address: No. and St. Gen. Del. City or Town Kermit State Texas
13. Check (x) Married X Single_ Widowed_ Widower_ Divorced; Male X Female_; White X Colored
14. Nationality American Speak English Yes
15. Age 28 Did you have on file employment certificate or permit? Yes
16. (a) Occupation when injured Floorman (b) Was this his or her regular occupation? Yes (If not, state in what department or branch of work regularly employed) ____
17. (A) How long employed by you 20 Mo. (b) Piece or time worker Time (c) Wages per hour $ 95g
18. (a) No. hours worked per day 6 (b) Wages per day $5.70 (c) No. days worked per week 7 (d) Average weekly earnings $39.90 (e) If board, lodging, fuel or other advantages were furnished in addition to wages, give estimated value per day, week or month None

Cause of Injury

19. Machine, tool or thing causing injury? Joint of 3" Drill Pipe. (20. Kind of power, (hand, foot, electrical, steam, etc.) Steam 21. Part of machine on which accident occurred Derrick Floor . 22. (a) Was safety appliance or regulation provided? ____ (b) Was in use at time? ____
23. Was accident caused by injured' failure to use or observe safety appliance or regulation? ____
24. Describe fully how accident occurred, and state what

employee was doing when injured Injured man was latching elevators; while picking up 3" drill pipe, joint of pipe slipped out of elevators striking man on right leg above knee.

25. Names and addresses of witnesses Donnie Collins, Wink, Texas

Nature of Injury	26.	Nature and location of injury (describe fully exact location of amputations or fractures, right or left) Femur bone in right leg broken about 7" above knee.
	27.	Probable length of disability 4 to 6 months
	28.	Has injured returned to work? No If so, date and hour at what wage
	29.	At what occupation
	30.	(a) Name and address of physician C.A. Robinson, Kermit, Texas (b) Name and address of hospital (Same)
Fatal Cases	31.	Has injured died? No If so, give date of death

Date of this report May 25, 1939 Firm Name Magnolia Petroleum Co.

(Signed by /s/ R.D. Myers

Official Title Drlg. Supt.

INDUSTRIAL ACCIDENT BOARD
RECEIVED
MAY 30 1939
STATE OF TEXAS

57

11-37 Y-16695 X-307

BOARD NO. _____

INS. CO. NO. 151-659 Form A 1 - Rev. 4-36

REPORT OF INITIAL PAYMENT OF COMPENSATION

Safety Casualty Company
Name of Insurance Company

Sullivan H. Hunt — Kermit, Texas
Name of Claimant or Legal Beneficiary (Street and Number) City or Town

Magnolia Petroleum Company — Dallas, Texas
Name of subscriber (Street and Number) City or town

May 25, 1939
Date of Injury

June 8, 1939
Date of Draft or Evidence of Initial Payment

$20.00 for 1st weeks from 2nd day of June
Amount of Initial Payment

193 9 to 8th day of June, 193 9, incl.

$20.00
Weekly rate of compensation

Injured right leg above knee
Nature of Injury

Remarks:

Draft mailed care of Magnolia Petroleum Company, Odessa, Texas.

SAFETY CASUALTY COMPANY
Name of Insurance Company

Dallas, Texas
(Address of office sending in this form)

INDUSTRIAL ACCIDENT BOARD
RECEIVED
JUN 9 1939
STATE OF TEXAS

[fol. 83] THE STATE OF TEXAS,
County of Travis:

I, Berniece Grieder, Secretary of the Industrial Accident Board of the State of Texas, hereby certify that the attached and foregoing is a full, true and correct copy of the Claim numbered and styled Y-16695, Sullivan H. Hunt, Employee vs. Magnolia Petroleum Company, Employer, as the same appears of record in my office, and that I am the lawful processor and custodian of said record, and that each instrument bearing the receiving stamp of the Industrial Accident Board of the State of Texas was received and filed in this office on the date shown by said endorsement thereon.

Witness My Hand and Seal of Office at my office in the Land Office Building in the City of Austin, Travis County, Texas on this, the 9th day of January, 1941.

(S.) Berniece Grieder, Secretary (Seal.)

Filed in Evidence, In Suit 20981, and Marked M-1. O. J. Gill, Clerk of Court.

[fol. 84] Industrial Accident Board, State of Texas

I, Otto Studer, Chairman of the Industrial Accident Board of the State of Texas, Do Hereby Certify that Berniece Grieder is Secretary of the Industrial Accident Board of the State of Texas and that she is custodian of the records of this Department.

In Testimony Whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the Industrial Accident Board of the State of Texas on this, the 9th day of January, 1941.

(S.) Otto Studer, Chairman. (Seal.)

[fol. 85] (Texas State Seal)

THE STATE OF TEXAS,
Department of State:

I, M. O. Flowers, Secretary of State of the State of Texas, Do Hereby Certify that, according to the records of this Office, Otto Studer is chairman of the Industrial Accident Board, having been

Appointed: May 19, 1937.
Confirmed: May 21, 1937.

Qualified: September 1, 1937.
Commissioned: September 1, 1937.
Expiration of Term: September 1, 1943.

In Testimony Whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 9th day of January, A. D. 1941.

(S.) M. O. Flowers, Secretary of State. (Seal.)

Form G56-436-5M

[fol. 86] Industrial Accident Board, State of Texas

I, Otto Studer, Chairman of the Industrial Accident Board of the State of Texas, Do Hereby Certify that the Board made and entered its final order in the Claim, Y-16695 Sullivan H. Hunt vs. Magnolia Petroleum Company, on the 3rd day of December, 1940.

I Further Certify that Notice of Intention to Appeal from the Board's award of December 3, 1940 has not been filed by any of the parties, named in the award.

In Testimony Whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the Industrial Accident Board of the State of Texas on this, the 14th day of January, 1941.

(S.) Otto Studer, Chairman. (Seal.)

Filed in Evidence In Suit 20981 and Marked M-2. O. J. Gill, Clerk of Court.

[fol. 87] [File endorsement omitted]

IN DISTRICT COURT OF CALCASIEU PARISH

EXHIBIT "M-3"

Magnolia Petroleum Company, a Socony-Vacuum Company, Legal Department, Dallas, Texas

Walace Hawkins, General Counsel; Earl A. Brown, Roy C. Ledbetter, Raymond M. Myers, E. L. Wilkerson, Chas. B. Wallace, Ross Madole, R. T. Wilkinson, Jr., Assistants

Messrs. Liskow & Lewis, Attorneys at Law, Weber Building, Lake Charles, Louisiana

January 3, 1941.

GENTLEMEN:

I have received your request for an opinion on the following questions under the laws of the State of Texas:

I. That the Industrial Accident Board is a body of original jurisdiction for compensation claims.

II. That an award of the Industrial Accident Board becomes final within twenty days from the date thereof and a notice of intention to appeal to the district court from the award must be filed within the twenty day period.

III. That the Texas compensation statute is elective rather than compulsory.

I

The Industrial Accident Board Is a Body of Original Jurisdiction for Compensation Claims

The statutes of Texas affecting this question are as follows: Title 130, Workmen's Compensation Law, Part 2, Article 8307, Revised Civil Statutes of Texas:

[fol. 88] "Sec. 1. The Industrial Accident Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Said board shall have the powers, duties and functions hereinafter conferred."

"Sec. 4. The Board may make rules not inconsistent with this Law for carrying out and enforcing its provisions, and

may require any employee claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the Laws of this State. If the employee or the Association requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Association to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

"When authorized by the board, the Association shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Association shall pay for such examina-
[fol. 89] nation and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the board at the request of the Association, the Association shall pay the fee of the physician selected by the employee, such fee to be fixed by the Board.

"Process and procedure shall be as summary as may be under this Law. The Board or any member thereof shall have the power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate

to questions in dispute, punish for contempt in the same manner and to the same extent as a District Court may do, and to bar persons guilty of unethical or fraudulent conduct from practicing before the Board. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Law. (As amended Acts 1931, 42nd Leg., p. 175, ch. 102, sec. 1.)."

"Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except, as otherwise provided, be determined by the Board." . . .

In the case of *Todd vs. Southern Casualty Company*, 18 S. W. (2d) 695, (affirmed by the Commission of Appeals of Texas, Section B), 29 S. W. (2d) 973, the court said:

"The Industrial Accident Board is a special tribunal clothed with full authority to hear and determine all matters relating to the enforcement of the Workmen's Compensation Act and no other court can exercise original jurisdiction for the enforcement of the terms and provisions of the same."

[fol. 90] The Industrial Accident Board has exclusive original jurisdiction of all claims arising from injuries to employees of a subscriber under the Workmen's Compensation Law. *Texas Employers Insurance Association vs. Bradshaw* (Civil Appeals), 27 S. W. (2d) 314.

II

An Award of the Industrial Accident Board Becomes Final Within Twenty Days from the Date Thereof and a Notice of Intention to Appeal to the District Court from the Award Must Be filed Within the Twenty Day Period

The applicable statute under the Workmen's Compensation Law is Article 8307, Section 5, which in its entirety reads as follows:

"Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise

provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provision of this law and the suit of the injured employe or person suing on account of the death of such employe shall be against the association if the employer of such injured or deceased employe at the time of such injury or death was a subscriber as de- [fol. 91] fined in this law. If the final order of the Board is against the association, then the association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the Court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in Court upon request free of charge, with a certified copy of the notice of the employer becoming a subscriber filed with the Board and the same when properly certified to shall be admissible in evidence in any Court in this State upon trial of such claim therein pending and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the association, it shall at once comply with such final ruling and decision, and failing to do so the Board shall certify the fact to the Commissioner of Insurance and such certificate shall be sufficient cause to

justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas."

"Sec. 5B. In computing the twenty (20 days for the filing with the Board notices of unwillingness to abide by the final ruling and decision of the Board, and likewise in computing the twenty (20) days to institute a suit to set aside the final ruling of said Board, if the last day is a legal holiday or is Sunday, then, and in such case, such last day shall not be counted, and the time shall be and the same is hereby extended so as to include the next succeeding business day; but this provision shall not extend to or include any cases now filed or now pending in the trial [fol. 92] court or on appeal from the trial court; the rights of the parties in such suits now pending or on appeal from the trial courts shall be determined by the law existing prior to the passage of this Act. (As added Acts 1937, 45th Leg., 2nd C. S., p. 1890, ch. 18, sec. 1.)."

In the case of *Tate vs. Standard Accident Insurance Company*, 32 S. W. (2d) 932 (Court of Civil Appeals) the court says:

"The law requires that notice of appeals shall be filed by the dissatisfied party with the Board within twenty days after the final award is made by the Board."

Timely notice to Board of appeal from the award is necessary to confer jurisdiction on trial court, and the claimant must plead and prove the same. *New Amsterdam Casualty Company vs. Hough*, 277 S. W. 794; *Texas Employers Insurance Association vs. Nelson*, 292 S. W. 651.

The courts have made it clear that the award of the Industrial Accident Board, not appealed from, is final.

In the case of Ocean Accident and Guarantee Corporation vs. Pruitt, 58 S. W. (2d) 41 (writ of error denied by the Supreme Court) the court says:

"As already shown, when the matter of compensation for Frank Pruitt's death was presented to the Board originally, the Board absolutely refused compensation. No notice of dissatisfaction was given by William Pruitt et al., and no suit was filed appealing therefrom. It follows that such order became final and the Board had no power or jurisdiction to pass on the matter a second time. (Page 44.)

* * * It is further the rule that the final award of the

[fol. 93] Board, unappealed, is entitled to the same faith and credit as a judgment of a court." (Page 45.)

III

The Texas Compensation Statute is Elective Rather Than Compulsory

There is no provision in the Texas statute requiring an employer to become a subscriber; however, the penalty for not subscribing is the abrogation of his common law defenses. The applicable statute reads as follows (Article 8306):

"Sec. 1. In an action to recover damages for personal injuries sustained by an employe in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employe was guilty of contributory negligence.

2. That the injury was caused by the negligence of a fellow employe.

3. That the employe had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employe to bring about the injury, or was so caused while the employe was in a state of intoxication.

4. In all such actions against an employer who is not a subscriber, as defined hereafter in this law, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment. (Acts 1917, p. 269.)

[fol. 94] "Sec. 2. The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, ranch laborers, nor to employes of any firm, person or corporation having in his or their employ less than three employes, nor to the employes of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common

carrier. Any employer of three or more employes at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding after having become a subscriber the number of employes may at times be less than three. (Acts 1917, p. 269, Acts 1921, p. 221.)

"Sec. 3. The employes of a subscriber and the parents of minor employes shall have no right of action against their employer or against any agent, servant or employe of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employes shall have no right of action against such subscribing employer or his agent, servant or employe for damages for injuries resulting in death, but such employes and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for. All compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. (Acts 1917, p. 269; Acts 1923, p. 385.)

The statute is elective as to the employee to the extent set out in the following section of Article 8306:

"Sec. 3a. An employe of a subscriber shall be held to have waived his right of action at common law or under any [fol. 95] statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employe shall not have given the said notice within five days of notice of such subscription. An employe who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five days after its delivery to his employer or his agent. Any employe of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this

section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State. (Acts 1917, p. 269.)

The courts have held, however, that an employer must give notice that he is a subscriber to the insurance fund to employees hired subsequent to his becoming such subscriber. *Consumers Gas and Fuel Company vs. Erwin*, 243 S. W. 500 (writ of error refused).

I think the above covers the questions as asked by you.

Yours very truly, (S.) Raymond M. Myers.

RMM:SH.

[fol. 96] In District Court of Calcasieu Parish

Exhibit "Hunt-4"

Industrial Accident Board, Land Office Building, Austin

Otto Studer, Chairman; H. Fred Martin, T. B. Hill, Members. December 9, 1940. Mrs. Berniece Grieder, Secretary.

In replying refer to our No. Y-16695.

In re: Sullivan H. Hunt vs. Magnolia Petroleum Company

Hawkins and Tritico, Attorneys, Arcade Theatre Building, Lake Charles, Louisiana

Gentlemen:

We have your letter of December 5, 1940. We enclose herewith a copy of the Board's award in the above captioned case, which was entered on date of December 3, 1940.

Yours very truly, Industrial Accident Board, (S.) Berniece Grieder, Secretary.

BG/mff
encl

[File endorsement omitted.]

[fol. 97] Y-16695

SULLIVAN H. HUNT

vs.

MAGNOLIA PETROLEUM COMPANY, Employer

Safety Casualty Company, Insurer

On this 3rd day of December, 1940, after due notice to all parties, came on to be considered by Industrial Accident Board claim for compensation by Sullivan H. Hunt against the Safety Casualty Company, and Board finds and orders:

On May 25th, 1939 Magnolia Petroleum Company was a subscriber to the Employers' Liability Act with insurance carried by Safety Casualty Company. In its employ was Sullivan H. Hunt whose average weekly wage was $39.90, and compensation rate $20.00 per week under the Act. On said date Sullivan H. Hunt suffered injury in course of employment resulting in his total incapacity for performance of labor from May 25th, 1939 to October 31st, 1940, which have matured in the sum of $1,500.00, and was followed by permanent partial incapacity of 50% as related to permanent and total loss of use of a leg for which he is entitled to $11.97 per week for remaining period of 125 weeks.

Safety Casualty Company is ordered to pay Sullivan H. Hunt $1,500.00 for accrued compensation for total incapacity, and the further sum of $11.97 per week for remaining period of 125 consecutive weeks from October 31st, 1940 for permanent partial incapacity. Previous payments of compensation, if any, shall be deducted from this award.

When this award has been fully paid, the Safety Casualty Company will stand finally discharged from all liability by reason of this claim for compensation.

[fol. 98] Industrial Accident Board, Land Office Building, Austin.

Otto Studer, Chairman; H. Fred Martin, T. B. Hill, Members, Mrs. Berniece Grieder, Secretary.

In replying refer to our No. —.

Notice

Any interested party who is not satisfied with the accompanying final ruling and decision of the Industrial Accident Board has the legal right to appeal to the Courts of

Texas. In order to do so such person desiring to appeal shall, within twenty (20) days after the rendition (meaning the date named in the award) of such final ruling and decision, file with the Industrial Accident Board Notice, in writing, that he will not abide by such ruling and decision. And in order to perfect the appeal, he shall, within twenty (20) days after filing such notice with the Board, bring a suit in the county where the injury occurred to set aside said final ruling and decision.

When suit has been filed the Industrial Accident Board shall proceed no further toward the adjustment of the claim, but the rights and liabilities of the parties shall be determined by the Courts according to the provisions of the Workmen's Compensation Law.

[fol. 99] In District Court of Calcasieu Parish

Exhibit "Hunt-5"

Industrial Accident Board, Land Office Building, Austin.

Otto Studer, Chairman; H. Fred Martin, T. B. Hill, Members. November 22, 1940. Mrs. Berniece Grieder, Secretary.

In replying refer to our No. Y-16695. Sullivan H. Hunt vs. Magnolia Petroleum Company.

Hearing Date: November 19, 1940.

Sullivan H. Hunt, Rosepine, Louisiana

Dear Sir:

Your claim was set for hearing before the Board for the date shown above, and with the Board's letter advising you of the setting of your claim, we enclosed Form 113, Affidavit and Statements in Support of Claim, for your use in filing evidence in support of your claim.

The Board cannot pass upon your claim and render an award in keeping with the facts until you have filed adequate evidence in support of your claim to serve as a basis for a fair and just award.

We suggest that you complete and file the enclosed Form 113 in accordance with the instructions set out in the enclosed Form 12, and that you be certain to file in connection therewith a complete and comprehensive medical report

signed by a reliable physician in whose judgment you have confidence, setting out in detail your present physical condition, and the exact percentage of any temporary, partial or permanent, partial disability which you may have as a result of your injury.

Yours very truly, Industrial Accident Board, (S.) Berniece Grieder, Secretary.

md/
Encl. 12 and 113

P. S.: All we require in this case is a doctor's report setting forth your condition at the present time. You can use the part of Form No. 113 enclosed, entitled Statement of Physician, and have a good doctor fill it out. IAB

[File endorsement omitted.]

[fol. 100] In District Court of Calcasieu Parish

Direct and Cross-examination of Witness, Sam Lipscombe, as to the Laws of Texas

Mr. Sam Lipscombe, Being first duly sworn, testified as follows:

Direct examination.

Mr. Lewis:

Q. Mr. Lipscombe, what is your profession?

A. I am a lawyer.

Q. Please state where you are practising and the extent of your practise?

A. Well, I have been a practising lawyer at Beaumont for upwards of twenty-five years. Admitted to practise in the supreme court and engaged in the general civil practise, trial of law suits and the general run of ordinary civil business.

Q. Beaumont in the State of Texas?

A. That is correct, yes.

Q. Mr. Lipscombe, I will ask you whether or not in the State of Texas, the Industrial Accident Board, is the body of original jurisdiction for compensation claims.

Plaintiff objects to this question and any other questions concerning the Industrial Board of Texas. For the reason

that such would be irrelevant and immaterial. This suit has been brought under the laws of the State of Louisiana, and all proceedings connected therewith must be governed by the laws of the State of Louisiana.

The Court: The objection is overruled.

A. The Industrial Accident Board of the State of Texas is the original administrative body before which claims all go before they are adjudicated by any court, at all.

[fol. 101] Q. Will you please describe to the Court the procedure that is required in order for an employee to submit himself under the laws of the state of Texas to the jurisdiction of the board?

A. The ordinary procedure is for him to present his claim for compensation. Then it takes the ordinary course before the board. Then the board makes a ruling and that ruling is final unless it is appealed from, and the procedure of appeal is to give notice of dissatisfaction within twenty days after the final award, and to follow that up by filing your suit in a court of competent jurisdiction.

Q. Mr. Lipscombe, is it necessary under the laws of the State of Texas that there be presented to the board a formal verified petition or any sort of complaint signed by the plaintiff?

A. No, it is not necessary to have a verified complaint. The proceedings are informal. All that is to be done is presentation of the claim stating the time of the injury and stating the right to recover compensation.

Q. I hand you herewith pho-statie copies of two documents. The first marked "Claim for compensation for injury". And the second entitled "Notice of injury." Both of which purport to bear the signature of Sullivan H. Hunt, and which have already been introduced in evidence in this case, as a part of offering "M-1", and I will ask you whether or not these documents would be sufficient under the laws of the State of Texas to constitute a suit or demand for compensation before the Industrial Accident Board?

A. The documents which you described in your question and which are before me, the pho-stats, are sufficient under [fol. 102] the laws of Texas to start the machinery of the Accident Industrial Board in motion. And these documents are the documents customarily supplied by the Accident Board in the presentation of claims. That is the usual procedure which is followed in presenting the claim to the In-

dustrial Board, in form similar to these I have before me.

Q. To rephrase the question, Mr. Lipscombe, would these documents have the same effect as a formal petition before the District Court, in an ordinary civil action?

A. Well, the Industrial Accident Board is not a court. It is an administrative body having original jurisdiction of Workmen Compensation Claims; and they have the effect of the institution of a suit, if the court were the body of original jurisdiction. However, under our practise, it is absolutely necessary, before the District Court or the trial court can obtain jurisdiction that the claim go before the Industrial Accident Board, and the matter is held de-nova in the district court.

Q. It is true, however, with respect to the machinery before the Industrial Accident Board, that there would be no subsequent right to urge the claim before the district court or before any other court or tribunal unless it was done within the twenty day period following the court award?

A. You have twenty days within which to give notice of dissatisfaction, and you have twenty days after giving the notice within which to institute your proceeding in the district court, so that when thirty-nine days may elapse taking advantage of all the time given by law by which to [fol. 103] institute your action in the district court to set aside the award if claimant is dissatisfied. That is to say, if the notices were not given within the twenty days and if the suit was not filed in district court to set aside the award.

Q. Mr. Lipscombe, I also hand you herewith photostatic copy of a letter dated October 16, 1940, addressed to the State Board of Compensation, Austin, Texas, in which apparently assigned by Sullivan Hunt. The letter forming a part of an offering previously made herein, and identified as "M-1", and I will ask you whether or not that letter would be sufficient to envoke the jurisdiction of the board.

Plaintiff objects, because the question elicites an answer not within the province of an expert *q*itness on the laws of the State of Texas. We have no *We have no* objection, whatsoever, to the witness stating just what the laws of Texas might require in order that a claim for compensation might be instituted, but we do object to this witness taken a letter supposedly written by Sullivan H. Hunt and

then stating to the Court that the letter is sufficient to enter proceedings under the Texas law. We believe that the Court should decide that question after finding out what the laws of Texas require, and after reading the letter.

The Court: The objection is maintained.

Q. Mr. Lipscombe, I will ask you whether or not under [fol. 104] the laws of the State of Texas, the machinery of the Industrial Accident Board could be evoked by a compensation claimant merely by an informal letter?

Plaintiff objects. We think it should be confined to the question propounded to the witness as to what the laws of Texas are.

The Court: The objection is maintained.

Q. Will you please state to the Court in greater detail the status of the laws of the State of Texas with respect to the filing of compensation claims before the Industrial Accident Board, in particular with the necessity of a formal claim being filed?

A. Well, with reference to use of your phrase. The law is set forth in Texas jurisprudence as to this effect, Volume 45 Page 746. "All that is required is an intelligent statement of the matters in controversy, identifying the interested parties, describing the injury in a general way, and narrate the manner in which it occurred. That text is supported by the case of Jaret vs. Travelers Insurance Company, Southwestern Second, Volume 66, page 415.

Q. Mr. Lipscombe, you assume for the purpose of this question, that the plaintiff in this case was employed by the defendant in Louisiana, that he worked in Louisiana for a considerable period of time, and was then transferred to the State of Texas. Please explain to the Court the status of the Texas law in so far as the interpretation of jurisdiction of the Texas courts are concerned, over his claims and injury.

[fol. 105] Plaintiff objects—For the reason this is a matter entirely within the jurisdiction of this court to decide after finding out what the facts are as to whether this court has jurisdiction or not.

The Court: The objection is maintained.

Q. For the purpose of completing the record, I will ask you, Mr. Lipscombe, whether or not, the decision of Travel-

ers and General Insurance Company v. Stakes, as reported in Southwestern 2nd, 270, does not represent the Texas law on the question of assumption of jurisdiction over injuries occurring in the State of Texas even though resulting in temporary employment?

Objected to, for the reason previously urged. It is irrelevant and immaterial.

The Court: The objection is sustained.

In connection with the testimony of this witness, defendant offers in evidence, decision in the case of Teavelers General Insurance Company vs. Stakes, 131 Southwestern Second, 270. Marked "D-1A- for identification. Reserve the right to substitute a certified copy.

Cross-examination.

Mr. Hawkins:

Q. Mr. Lipscombe, would the employer have a right under [fol. 106] the procedure as required by your Industrial Accident Board to present the question for determination to that board, as well as to the employee where there is a difference between the employer and the employee?

A. That is fre-uently initiated by the employer where the claims are to be adjusted by agreement. Frequently the employer admit- liability, and there is no occasion for the board to decide the claim unless a controversy arises. Unless the claimant is asserting he is not getting the benefit of what the law is intending to give him.

Q. Now, let us assume that an employer is paying the claimant the maximum compensation, which I believe is twenty dollars a week, the same as ours?

A. Yes.

Q. And the employer concludes that is excessive and decides to reduce by say by one-half. Would not the employer then apply to the Indistrial Accident Board for permission to reduce the amount of compensation?

A. It woul-n't be necessary, I don't think.

Q. That is the custom, is it not?

A. No, sir—I don't think so. He would just merely notify the employee he had miscalculated and reduce the payments accordingly.

Q. Without acquainting the Industrial Board with that action, whatever?

A. I don't think it would be necessary, No, sir.

[fol. 107] Q. When the Industrial Accident Board renders a decision or makes an award, upon giving that award or decision under any circumstances it becomes res adjudicata?

A. Yes, I think so, unless appealed from. I am certain that is the law of Texas, it is in the nature of res judicata unless it is appealed from.

Q. Now Sir, give me if you can conveniently, the provision of the Texas Compensation law which gives its extra territorial effect?

A. No, sir, I can't point to any part of the Statute that does.

Q. Do you know of a provision in the Statute?

A. There is a provision in the Texas Workmen's Compensation law. It is Section 19 of Article 8306, and is a part of the Acts of the 40th Legislature of 1927, page 383, Chapter 295, page 363. Also the Acts of 1931, 42nd. Legislature—Page 133, Chapter 90. I show that Se-tion 19.

Q. You might read that or we will have it copies in the record.

A. I will read it if you wish me to?

Q. Yes, sir.

A. "If an employee who has been held in this state sustaining injury in the course of employment, he shall be entitled to compensation, according to the law of this state, even though such injury was received outside of this state; and that such employee though injured out of the State of [fol. 108] Texas shall be entitled to the same right and remedies as if injured within the State of Texas, except that in such cases of injuries outside of Texas, the suit of either the injured employee or his beneficiaries or of the association to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Section 5-58, shall be brought either under subdivision A in the county of Texas where the contract of hiring was made; or in the county of Texas where such employee or his beneficiaries or any of them resided when the suit was brought,—or C, in the county where the employee or the employer resided when the contract of hiring was made, as the one filing such suit may elect. Providing that such injury shall have occurred within one year prior to date such injured employee leaves this state. Provided further,

that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred."

Mr. Lewis:

Q. I am not sure whether I asked you or not, Mr. Lipscombe, is the Texas Compensation Act an elective one?

A. Yes, sir, it is.

[fol. 109] In District Court of Calcasieu Parish

Mrs. Hunt, Recalled:

Mr. Hawkins:

Q. Mrs. Hunt, you heard Mr. L. E. McGee, Jr., testify here today?

A. Yes, sir.

Q. Will you please state to the Court where you first saw and met Mr. McGee?

A. I first saw Mr. McGee on June 3, when he visited my husband in the Kermet Hospital in Kermit, Texas.

Q. Mrs. Hunt, I will hand you a photostatic copy of one document entitled "'Claim for compensation for injury", And a pho-static copy of another document, entitled "Notice of injury"—And ask you what Mr. McGee told you concerning those, if anything. How did you get them?

A. Well, before I saw these documents or knew anything about them was when Mr. McGee first came to the hospital and told me that I would receive some blanks—And he said in order for Mr. Hunt to get his compensation that these blanks must be filled in and mailed.

Q. Did you later receive those blanks?

A. Yes, sir.

Q. How did you get them?

A. Through the mail.

Q. Do you know who sent them to you?

A. No, sir, I couldn't say where they came from or who mailed them.

Q. And at that time what was the condition of Mr. Sullivan H. Hunt?

[fol. 110] A. At that time he was flat of his back with a pin through his leg.

Q. Mr. Hunt, did you attend to the filling out of these blanks?

A. I did.

[fol. 111] IN DISTRICT COURT OF CALCASIEU PARISH

No. 20981

SULLIVAN H. HUNT

VS.

MAGNOLIA PETROLEUM CO. et al.

REASONS FOR JUDGMENT ON MERITS—Filed March 4, 1942

This is a compensation suit brought by plaintiff against the Magnolia Petroleum Company claiming compensation in the amount of $20.00 per week for four hundred weeks.

The accident occurred at Kermit, Texas, and the case was first before the Court on exceptions filed by the defendant.

The above exceptions were based upon the proposition that the Texas Industrial Accident Board had taken jurisdiction of the case and had rendered an award which in fact amounted to a judgment. These exceptions were overruled by the Court, and the case is now before us on its merits.

There is no contest as to the employment, or the accident arising out of and in the course of the employment, and there is no contest as to the amount of compensation due per week. We are concerned now only with the disability of plaintiff.

The facts of the case show that plaintiff's right leg was broken as a result of the accident, and for a period of several months he was confined in hospitals and was under the care of various physicians.

[fol. 112] At the date of the trial the plaintiff walked with a decided limp. His leg could not be flexed at the knee beyond a 60 degree angle, and his ankle was swollen and stiff. This was the condition of plaintiff approximately two years and four months after the accident.

The evidence in the case shows that the plaintiff was employed as a floor man for the oil company, and that he was qualified to do practically no other sort of labor.

The experts in the case for the plaintiff testify that the plaintiff is totally and permanently disabled; that he has a shortening of the right leg of approximately one inch; that he has a curvature of the spine and tilting of the pelvis due to the shortening of the leg, and that he suffers pain due to his condition.

Experts for the defendant testify that the plaintiff is approximately 25 per cent disabled. They maintain that he could not perform all of the duties of a roughneck, but that by working steadily some additional improvement could be obtained in his condition.

From an observation of the plaintiff and the testimony of plaintiff's witnesses it is evident that he is in no condition whatsoever to perform the duties of a roughneck at this time, and in the opinion of the Court he will never be able to perform those duties.

In our opinion, this case is clearly in line with the case of McCain vs. Fohs Oil Co. and the other cases cited [fol. 113] therein, recently decided by the First Circuit Court of Appeals of this District.

For the reasons given in our ruling on the exceptions filed by defendant herein, it is the opinion of this Court that this is a Louisiana contract and subject only to adjudication in the State of Louisiana, and that the plaintiff is at the present time totally disabled from performing the duties of a roughneck or performing work of any reasonable character.

Defendant has paid a total of $845.02 in the treatment of plaintiff for hospital bills, medical and surgical service, and in the alternative has claimed credit for this amount should the Court award a judgment in favor of the plaintiff.

There is no evidence in the record to show that plaintiff agreed to refund any amount which defendant paid in excess of $250.00, and consequently the Court does not feel justified in granting a credit of this amount as against the award.

For the above and foregoing reasons there will be judgment in favor of the plaintiff and against the defendant condemning the defendant to pay plaintiff compensation at the rate of $20.00 per week with interest on each installment from the due date until paid, for a period of time not to exceed four hundred weeks, subject to credit for such payments as may already have been made. Costs to be paid by the defendant.

[fol. 114] Judgment will be signed in accordance with these views when presented.

Thus done, read and signed at *Lake Charles*, Louisiana, this *4* day of *March*, 1942.

(S.) Mark C. Pickrel, District Judge.

[File endorsement omitted.]

[fol. 115] IN DISTRICT COURT OF CALCASIEU PARISH

No. 20,981

SULLIVAN H. HUNT

vs.

MAGNOLIA PETROLEUM COMPANY, ET AL.

JUDGMENT—Filed March 11, 1942

This cause having been heard and submitted for adjudication and after having been taken under advisement by the Court, and the Court considering the law and the evidence to be in favor of the plaintiff, Sullivan H. Hunt, and against the defendant, Magnolia Petroleum Company, for the reasons contained in the written opinion of the Court duly delivered and filed in the record of this case:

It is ordered, adjudged and decreed that there be judgment in favor of the plaintiff, Sullivan H. Hunt, and against the defendant, Magnolia Petroleum Company, in the full and prinicipal sum of Eight Thousand Dollars, payable in four hundred equal weekly installments of Twenty Dollars each, beginning on the 25th day of May, 1939, subject to a credit of One Thousand Four Hundred Seventy Dollars, compensation already paid; together with five per centum per annum interest upon each and every installment from its respective maturity until paid, together with all costs of this suit.

It is further ordered, adjudged and decreed that the expert witnesses' fees of Drs. Stakley Hatchette and W. P. Bordelon be and the same is hereby fixed at the sum of *Fifteen* Dollars each, and let same be taxed as costs.

[fols. 116-166] Judgment rendered in Open Court of Lake Charles, Louisiana, on the 4th day of March, A. D., 1942.

Judgment read aloud and signed in Open Court at Lake Charles, Louisiana, on the *11th* day of March, A. D., 1942.

(S.) Mark C. Pickrel, District Judge.

[File endorsement omitted.]

[fol. 167] IN COURT OF APPEAL OF LOUISIANA, FIRST DISTRICT

SULLIVAN H. HUNT

VS.

MAGNOLIA PETROLEUM CO. ET AL.

Appeal from the 14th Judicial District Court, Parish of Calcasieu. Hon. Mark C. Pickrel, Judge

OPINION—October 8, 1942

LEBLANC, Judge:

The facts in this case are substantially as follows:

The plaintiff, Sullivan H. Hunt, a married man, residing with his wife at Westlake, Louisiana, was first employed by the defendant, Magnolia Petroleum Co., on August 2, 1937, and worked as an oil-field rough-neck in what is referred to as the Cameron Meadows District in Louisiana. At the time of this first employment he was examined by Dr. R. G. Holcomb, the defendant company's examining physician at Lake Charles, Louisiana. He worked intermittently in Louisiana, but on one occasion was sent for a brief period to the Amelia Oil-field in Texas, after which he again worked for the defendant in Louisiana.

On February 16, 1939, as had been the case before when work was slack, he was laid off; but on that occasion, he withdrew from a voluntary annuity and insurance plan carried by the Magnolia Petroleum Co. for its employees, and cashed the benefits he was entitled to receive thereunder.

Within a month from that date he was again contacted by an employee or representative of the defendant company out of its Lake Charles office and was advised that there was some work for him at Kermit, Texas. He reported at once [fol. 168] to the Lake Charles office and was sent, or went himself, to the Iowa field office, at Iowa, Louisiana, where records of physical examinations in the Louisiana district were kept, but was unable to secure his record just then. He was instructed however to report to the "tool-pusher" at Kermit, Texas, which he did, but before being put to work, had to submit to another physical examination which he passed. His wife went with him to Kermit, Texas, but

they did not move their furniture there. He started to work on March 14, 1939 and worked continuously until May 25, 1939, on which day he sustained a severe accidental injury to his right leg.

On the same day that plaintiff was injured his employer forwarded a report to the Industrial Accident Board of Texas on a standard form supplied by that Board. This form is styled "Employer's First Report on Injury". On June 9, 1939, the Safety Casualty Company, the employer's compensation insurance carrier for the State of Texas, reported their payment of compensation at the rate of $20.00 weekly.

On June 8, 1939, plaintiff also submitted two forms to the Industrial Accident Board, both of which had been supplied by the Board, one being styled "Claim for Compensation" and the other "Notice of Injury". These forms were filled out by plaintiff's wife but were signed by him. All matters relating to the filing of these forms by both the employer and employee appear to have been in conformity with the usual procedure under the Workmen's Compensation Law of Texas.

[fol. 169] In the meantime, the Safety Casualty Company continued to pay plaintiff compensation at the rate of $20.00 per week and also furnished him medical services until October 23, 1940, when his compensation payments were reduced to $10.00 per week. On October 26, 1940, plaintiff consulted the present attorneys who are prosecuting this suit and they wrote the Safety Casualty Company demanding compensation for plaintiff at the rate of sixty-five per cent of his average weekly wages for four hundred weeks under the Workmen's Compensation Law of Louisiana. (Act 20 of 1914, and its amendments). On receipt of this letter, the Safety Casualty Company sent plaintiff's attorneys a notice of suspension of payments in any amount whatsoever and the Industrial Accident Board of Texas was notified to that effect.

It appears that after plaintiff had been treated for his injury at Kermit, Texas for some weeks, it was suggested to him that he be removed to a hospital with better facilities at Big Springs, Texas, but he requested instead, that he be sent to Lake Charles to be treated by Dr. Holcomb. Some time during November, 1939, Dr. Holcomb performed an operation on his leg and he was kept in a cast for about six weeks. Several months later he was sent to San Antonio,

Texas to be examined by Dr. Amos Graves, and on October 16, 1940, he wrote a letter which he addressed to the "State Board of Compensation, Austin, Texas" in which he stated that Dr. Graves had advised him to undergo further operations on his leg and he would like to know what effect his refusal to submit to such operations would have on his compensation payments. He also made some inquiries regarding a reasonable settlement for his injury.

[fol. 170] All of this seems to have prompted the Industrial Accident Board to have a hearing of his case and accordingly on November 3, 1940, plaintiff was notified that a hearing would be held on November 19, 1940. At the same time he was furnished with a form calling for an affidavit and statements in support of his claim. He did not file the form and on November 23, 1940, was requested by letter to do so. On December 5, 1940, his attorneys wrote the Board advising that the matter of his claim had been turned over to them for attention and asked for a short delay in order that they might consult a Texas attorney with regard to the matter. The Board had, however, on December 3, 1940, rendered a decision in the case awarding compensation at the rate of $11.97 per week and its reply to the letter of the plaintiff's attorneys was to notify them to that effect. A copy of the award as made was also sent them. Neither plaintiff nor his attorneys had any further communication with the Board and it is shown that unless an appeal was taken within twenty days from the date of the award, the matter became final. Plaintiff however consistently refused to accept payments made under the award and on December 18, 1940, his attorneys filed the present proceeding in the district court of Calcasieu Parish claiming that he is entitled to recover compensation at the rate of sixty-five per cent of his average weekly wages, or $20.00 per week, for four hundred weeks, on the ground that the contract of employment under which he was engaged and worked at the time of his injury, was entered into in the State of Louisiana and that his rights to compensation thereunder are therefore governed by the Workmen's Compensation Statute of this state. Payments amounting to [fol. 171] $1470 are acknowledged in the petition and judgment is asked for in the sum of $8000 payable in four hundred weekly installments of $20.00 each, subject to credit for the full amount heretofore paid. It was shown

that the Safety Casualty Company does not carry the Magnolia Petroleum Company's compensation insurance for the State of Louisiana and therefore judgment is sought against the latter company alone.

The defendant first filed exceptions to the jurisdiction of the district court of Calcasieu Parish, ratione matariae, of no right or cause of action and also a plea of estoppel. These were all filed on the same day. Several days afterwards defendant filed another exception of no right of action and an amended exception of res adjudicata. All of these exceptions and pleas were tried and submitted together in the lower court and were all overruled. The defendant applied to the Supreme Court for writs of certiorari and prohibition but these were refused on the ground that the remedy was by appeal from final judgment in the event the case was decided adversely to the defendant.

Under reservation of its various pleas and exceptions the defendant then filed its answer in which it admitted the accident and plaintiff's resulting injury and that he was paid compensation in the amount of $1470. Most of the issues raised under the former pleas were again presented and in addition plaintiff's present disability was denied. Pleading in the alternative, defendant alleged that at plaintiff's direction, and with his consent, it had incurred necessary medical, surgical and hospital expenses in his behalf in the sum of $1095.62 and that in the event there should be [fol. 172] judgment rendered in his favor, it is entitled to an off-set in the sum of $845.62 which is the amount it has paid in excess of the maximum of $250 required to be paid for such services under the Workmen's Compensation Statute of Louisiana.

After trial on the merits in the lower court there was judgment in favor of the plaintiff awarding him compensation at the rate of $20.00 per week beginning May 25, 1939, for a period not to exceed four hundred weeks, subject to a credit of $1470 for compensation already paid. The defendant's alternative plea for an offset of $845.62 was rejected. From that judgment the defendant is prosecuting the present appeal in which is re-urges all of its former pleas and exceptions as well as those issues presented on the merits.

The most important plea, we think, and apparently the one most seriously urged by the defendant, is that of res adjudicata. In it may be said to be involved the plea to the

jurisdiction of the court ratione matariae and the exception of no cause or right of action as well, as one of the questions raised under it, is whether or not the contract of employment between the plaintiff and the defendant is a Louisiana contract and as such governed by the Workmen's Compensation Statute of Louisiana, which is a dominant and controlling issue under all the other pleas mentioned. If the contract is a Louisiana contract then of course plaintiff has a cause of action in a Louisiana court and such court has jurisdiction of the case but under the pleas of res adjudicata it is further contended that the plaintiff having gone before the Industrial Accident Board of Texas to have his claim adjudicated and the award of that Board [fol. 173] having now become final, the ruling of that Board is entitled to the full faith and credit that one State must give to the judicial proceeding of another State under Section 1 of *the* Art. 4 of the Constitution of the United States.

Under the facts relating to plaintiff's employment on the particular job he was working on at the time of his injury, we believe that the district judge was correct in holding that the contract between him and his employer was a Louisiana contract, and that being so, both parties were subject to the provisions of the Louisiana compensation statute. Plaintiff is and was at the time, a resident of, and domiciled in this State, and his employer is and was at the time extensively engaged in business in this State also. All their employment relations heretofore, with the single exception of one instance when plaintiff had been temporarily sent to Texas, were confined to Louisiana. If it be assumed that his cashing in of benefits under the annuity insurance plan carried by his employer, and which after all was a purely voluntary plan on its part, constituted a termination of their contractual relations, it can as well be stated and when his services were again solicited for the job on which he was injured, that that was a resumption of those same relations as indeed they had several times before been resumed under the same conditions, namely, that he could be placed at work either in Louisiana or in Texas. For this last job he was contacted, as before, in Louisiana by one of the employer's Louisiana representatives and was sent to its Louisiana office to get his work records, where they were kept, and very probably if the report of his physical examination [fol. 174] which also was kept in that office had been avail-

able at the time he would not have had to undergo another such examination in Texas.

There was nothing to show that the job he was to perform in Texas was to be any more permanent than any of the other jobs he had been engaged on before and the fact that he and his wife did not move any of their belongings with them indicated clearly that it was not their intention to there reside permanently. We have therefore just the converse of the situation which was found under the facts in the case of McKane vs. New Amsterdam Casualty Company, 199 So. 175, so strongly relied on by the defendant. That case is authority however to the effect that in seeking to ascertain the law of which State is to apply to a given case, all of the facts and circumstances should be examined with the view of discovering the true intent of the parties. In the present case, taking into account the method under which the parties had acted from the very beginning of their relations, the way in which they severed and resumed those relations, the nature of plaintiff's jobs which were always temporary and his proven intention not to reside permanently in the State of Texas where this last job was to be performed, we are led to the conclusion that this work like all of his previous jobs was to be a temporary one, and that to all intents and purposes the parties never having expressed themselves to the contrary, by its very provisions, their contract was presumed to have been made under the Workmen's Compensation Act of Louisiana (Sec. 3, Par. 1. Act 20 of 1914). As such that act had extra-territorial effect and notwithstanding the fact that the employee was injured in another State, his rights and the employer's [fol. 175] liabilities are governed by its provisions (See Hargis vs. McWilliams Co., 9 La. App. 108, 119 So. 88, and numberous other cases cited therein).

The district judge held that as the contract of employment arose under the Louisiana law and the rights of the parties were to be governed by that law, the Industrial Accident Board of Texas was without jurisdiction and therefore the award made under its ruling was a nullity.

He differentiated the case from others that were cited in brief of counsel for the defendant and in which the jurisdiction of a foreign tribunal was recognized on the ground that in those cases the plaintiff had sought his own forum in such tribunal, whereas here the plaintiff did not seek the Texas courts for the adjudication of his claim. As he held

that the award made under the Texas proceeding was a nullity, he naturally concluded that it could be disregarded by a Louisiana court the same as could a Texas court disregard a judgment of a Louisiana Court which was likewise a nullity, and therefore the full faith and credit clause of the Federal Constitution which had been invoked by the defendant did not apply.

We do not agree with the learned district judge to the extent that because the contract of employment arose in Louisiana the Industrial Accident Board of Texas was without jurisdiction to entertain the claim for compensation, nor can we agree that plaintiff did not at least voluntarily participate in the proceedings before that Board and thereby became a party to the same. It is conclusively shown that the Texas law vests the Industrial Accident Board of the State of Texas with jurisdiction in cases of compensation [fol. 176] involving injuries sustained by employees in that State and who are even only temporarily employed therein, and it is conceded that all proceedings before that Board and the awards made by it have the same force and effect as proceedings before and judgments rendered by courts of competent jurisdiction in that State. The vital and important question therefore is what effect must the Louisiana Court give to the ruling under which the award was made.

We recognize that there are decisions which seem to support the plea of res adjudicata filed by the defendant in this case, notably the cases of Martinez vs. W. G. Fritz Co. Inc. (New Jersey) 165 Atl. 873, and DeGray vs. Miller Construction Company (Vermont) 173 Atl. 566, both of which are cited in brief of counsel. Aetna Life Insurance Company vs. Menees (Georgia) 167 S. E. 335 also seems to be authority in favor of the plea. The first two of these decisions seem to be based on the ground that only one recovery or satisfaction should be had for one or the same cause of action. In our research however, we find that as long as the year 1916, in the case of Gilbert vs. Des Lauriers Column Mold Company, 167 N. Y. Sup. 274, the court had under consideration the question of the effect which the act of an employee having invoked the benefit of a foreign compensation statute and having received payments thereunder would have on his claim for compensation before the court of the State under whose law the contract of employment arose, and it was distinctly held that the fact that he had been induced to invoke the foreign statute in the first in-

stance did not deprive him of his right to have the laws of his contract of employment enforced in the manner pro-
[fol. 177] vided by law, and it having been shown that the insurance carrier had been credited with the amount it had paid under the provisions of the foreign statute "it was not in law aggrieved."

True it is that in that decision there is no mention made of the full faith and credit clause of the Federal Constitution but in pursuing the matter from that point of view we find a decision of the Supreme Court of the United States in which the matter is discussed quite at length. That is the case of Alaska Packers Association vs. Industrial Accident Commission, 294 U. S. 532, 55 S. Ct. 518. The case is annotated in 100 A. L. R. at page 1149.

The employee in that case was injured in Alaska while working for the employer under a contract of employment which arose in California. The employee was an alien and did not even reside in California. The contract of employment recited that he had elected to be bound by the Alaska Workmen's Compensation Law and it stipulated that the parties should be subject to and bound by the provisions of that statute. The California Workmen's Compensation Act contained a provision which made its terms applicable to employees who suffered injuries without the territorial limits of the state where he was a resident thereof and the contract of hiring had been made therein. The Supreme Court of California had by its ruling given effect to the statute of that state in preference to the Alaska statute and, in so doing, the Supreme Court of the United States held that it had not violated the full faith and credit provision of the Federal Constitution. The annotation re-
ferred to states that "the decision is based on the ground that where each state has a right to insist upon the applica-
[fol. 178] tion of its own law, the question as to which law should be applied must be determined according to which of the two states has the preponderance of interest in the transaction." The opinion itself, after stating that the subject of inquiry is whether the full faith and credit clause required the State of California to give effect to the Alaska statute rather than its own, contains this rather positive assertion: "It has often been recognized by this court that there are some limitations upon the extent to which a state will be required by the full faith and credit clause to enforce *even a judgment* of another state, in contravention of its

own statute or policy." (Italics ours.) Later on we find the court stating: "Prima facie, every state is entitled to enforce in its own courts its own statutes lawfully enacted. One who challenges that right because of the force given to a conflicting statute of another state by the full faith and credit clause assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign statute are superior to those of the forum.

We need not repeat what we have already said of the peculiar concern of California in providing a remedy for those in the situation of the present employee. Its interest is sufficient to justify its legislation and is greater than that of Alaska of which the employee was never a resident and to which he may never return. Nor should the fact that the employment was wholly to be performed in Alaska, although temporary in character, lead to any different result. It neither diminishes the interest of California in giving a remedy to the employee, who is a member of a class in the [fol. 179] protection of which the state has an especial interest, nor does it enlarge the interest of Alaska whose temporary relationship with the employee has been severed. The interest of Alaska is not shown to be superior to that of California. No persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in the circumstances the full faith and credit clause does not require that the statute of Alaska be given that effect."

In the present case, the interest of Louisiana appears to us to be even greater than was that of California in that case as the employee is a citizen of this state, domiciled and residing here. His employment in Texas, as shown was to be only temporary and from the moment of his injury his relationship with that state certainly was as much at an end as was that of the injured employee with Alaska in the other case. The employer's business in Louisiana, although probably not as extensive, was as important as was its business in Texas, and above all, in the contract of hiring there was no intimation whatever and much less any stipulation that the parties intended to be bound by the provisions of the Texas Workmen's Compensation statute.

Whilst the court was concerned in that case with the application of the full faith and credit clause in relation to the respective statutes of the two states involved, it is

significant that it predicated its remarks by referring to the limitations that have been recognized upon the extent to which *even the judgment* of one will be enforced by another state in contravention of its statute and policy. It would seem but natural that the same limitations would apply to [fol. 180] judgments of courts and rulings of administrative boards, because after all, such judgments and rulings can have no greater force and effect than the very laws themselves under which they are rendered.

In the case of Salvation Army vs. Industrial Commission (Wis.), 263 N. W. 349, the court had before it practically the same plea as is here presented. The employee who had been hired by the Salvation Army in Illinois to do work in the State of Wisconsin, died as a result of injuries sustained by him while performing such work in that state. The widow filed a claim for compensation in Illinois, and was awarded $3200 by the Industrial Commission of that state. She had, a few days before filing her claim in Illinois, also made an application to the Industrial Commission of the State of Wisconsin. The record contained a stipulation to the effect that the employer was subject to the Wisconsin law, that the relationship of employer and employee existed at the time of the injury and that the accident happened in Wisconsin.

The jurisdiction of the Wisconsin Industrial Commission was challenged on the ground that the claim for compensation had been adjudicated and determined by the Illinois Commission. The plea was rejected and the award made under the Illinois law was held to be no bar to the proceedings under the Wisconsin law; credit however was given for the former award. The test as apparently applied seemed to relate to the status of the deceased as an employee in the State of Wisconsin, and as he was held to have been subject to the compensation acts of both states, the court of [fol. 181] Wisconsin, conceding the jurisdiction of the Illinois courts to determine the widow's right under the act of that state, claimed the same jurisdiction to determine her rights under its own act. Under some of its former rulings the court held that the full faith and credit clause could only be invoked where the court of the other state had jurisdiction to effect proceedings under the Wisconsin act. Finally, the court quoted with approval the following pertinent sections from Restatement of The Law under the title Conflict of Laws Relating to Workmen's Compensation

Cases: "Section 402—Proceedings may be brought in a state under the Workmen's Compensation Act in that state, if it is applicable, although act of another is applicable"; and "Section 403—Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable act, but the amount paid under a prior award in another state will be credited on the second award." This we take to be the latest and correct statement of what the law is on the subject, and guided by that authority as well as whatever else has been stated by us, we hold that the plea of res adjudicata was properly over-ruled in the court below.

The plea of estoppel is based on the proposition that the plaintiff having accepted the payments made and having also accepted medical fees in excess of the amount provided for under the statute, he is barred from further proceeding with his claim. With regard to whatever payments he has accepted in the way of compensation he has voluntarily given credit for the same in his petition herein, and what he is asking now, is for further payments he claims he is entitled to receive under the Louisiana law. With regard to [fol. 182] the excess claimed to have been paid for medical fees, that is an amount which plaintiff himself did not personally receive and whether defendant is entitled to any relief it would be in the nature of a further credit which can only be determined on the trial of that question on the merits. The plea of estoppel was therefore also correctly overruled.

On the merits of the case we find no difficulty in agreeing with the trial judge that from the testimony that has been offered, it is evident that the plaintiff is in no condition to perform the work of a fireman or rough-neck on and around an oil derrick. At the time of the trial, more than two years after the accident, he was still walking with a decided limp, his right leg being approximately one inch shorter than the other. He had a curvature of the spine and a tilting of the pelvis. He could not flex his leg at the knee point beyond a sixty degree angle and besides, his ankle was swollen and stiff. His duties required him to be active on the floor of the derrick and to climb up to the top of it as the occasion demanded. Whilst some expert witnesses for the defendant expressed the opinion that the exercise brought on by work might be beneficial, we do not

understand them to mean that in his present condition he could satisfactorily perform such duties as are required of one engaged in his trade. That is the kind of work which, by his status in life, his training and experience, and his education, he is fitted for, and if by reason of his injury he cannot perform all the tasks and duties incident to it, he has to be considered as totally and permanently disabled and entitled to compensation as such. McCain vs. Fohs [fol. 183] Oil Company et al., 6 So. 2nd. 197; Ingram vs. Meridian Lumber Company, 178 So. 187.

On the plea of off-set for the sum paid by defendant in excess of that stipulated in the compensation statute for medical expenses, we find that the compensation law itself makes no provision for the deduction of any amount so paid. The employer's remedy in such cases, is for him to obtain the consent of the employee before incurring excessive charges in his behalf. Delaney vs. Ferd. Brenner Lumber Company, 154 La. 156, 97 So. 349. There seems to be some question as to whether an express consent is required or whether it may be implied. In Nichols vs. Tall Timber Lumber Company, 145 So. 691, the court held that the absence of any specific provision in the compensation statute, the matter was one of general law whereunder consent may be either express or implied. But even so, in that case the court stated that the deduction should only be allowed where consent is clearly proved. That impresses us as being a correct interpretation to be placed on the matter, but under the testimony in this case we find no such proof of consent which would justify the deduction claimed.

We think that the judgment appealed from correctly disposes of all the various issues presented in the case and for the reasons herein stated it is affirmed at the costs of the defendant, appellant herein.

Done in open court at Baton Rouge, La. this 8th day of Oct., 1942.

[fol. 184] [File endorsement omitted.]

[fol. 185] IN COURT OF APPEALS OF LOUISIANA

[Title omitted]

PETITION FOR REHEARING—Filed October 19, 1942

To the Honorable Judges of Said Court:

The application of Magnolia Petroleum Company, Defendant and Appellant in the above entitled cause, respectfully represents:

That the opinion and the decree rendered by this Honorable Court in the above entitled cause on October 8, 1942, is erroneous and contrary to the law and the evidence, and a rehearing should, therefore, be granted in said cause, all for the following reasons, to-wit:

I

The Court's decision is a holding that compensation claimants, unlike all other litigants, are not bound by the provisions of the United States Constitution and are, therefore, exempt from the restraint imposed by the full faith and credit clause of that Constitution.

While Defendant freely concedes that an employee seeking redress under the Compensation Act is entitled to receive from the Court a liberal interpretation of technical legal rules, this favorable treatment cannot be extended beyond fundamental constitutional barriers. If any other type of litigent had presented to this Court a claim having [fol. 186] the same history as that of the Plaintiff's case, undoubtedly this Court would have held that the Texas judgment was a complete bar to the prosecution of the second claim in Louisiana. On behalf of the Applicant herein, it is respectfully submitted that there are only three or four fundamental and well established exceptions to the rule requiring the giving of full faith and credit to foreign judgments, and the mere existence of a compensation claim does not constitute one of these exceptions.

II

The Court's decision is based entirely upon the unwarranted assumption that the award of the Industrial Accident Board of Texas applied the Texas law in granting Plaintiff an award. There is not a scintilla of evidence in

the entire record of this case showing what law was applied by the Board; and the mere possibility that the Texas Board may have taken the Louisiana law into consideration is in itself sufficient to establish the error that was committed in allowing Plaintiff to assert a second claim for the same cause of action. And the fact that Plaintiff may have failed to submit the Louisiana law and to claim under that law before the Texas Board is a dereliction from which Plaintiff alone must suffer. See Roche vs. McDonald, 275 U. S. 449, 48 Sup. Ct. 142.

So far as the evidence in the present record is concerned, this Court may have granted to the Plaintiff a *second* award for *Louisiana* compensation.

[fol. 187]

III

The decision of the Court appears to have been pitched almost entirely upon dicta of the United States Supreme Court in Alaska Packers Association vs. Industrial Accident Commission, 294 U. S. 532, 55 Sup. Ct. 518, but the very dicta cited by the Court establishes the correctness of the Defendant's position under its exception of res adjudicata. The language of the United States Supreme Court which was quoted by this Court in its decision is as follows (page 523 of 55 Sup. Ct. Reporter):

"It has often been recognized by this court that there are some limitations upon the extent to which a state will be required by the full faith and credit clause to enforce even the judgment of another state, *in contravention of its own statutes or policy.*" (underlining added.)

Under the clear language of the above quotation, only the judgment of another state which *contravenes* the statutes or policy of a second state will entitle the courts of the latter to disregard the full faith and credit clause. In the present case, it has not even been suggested that the Texas award is contrary to the statutes or public policy of Louisiana. The record shows that both states have elective compensation acts; and certainly it cannot be contended that any public policy is involved in considering the validity of a Texas decree which differs from the one rendered by this Court only in amount.

The holding of the United States Supreme Court in the Alaska Packers case would be of importance here if the

Texas award had not been rendered. That case involved [fol. 188] a factual situation which would have been present in the instant case had the plaintiff elected to return to Louisiana and prosecute his claim here without seeking redress in Texas. Under the Supreme Court decision as well as holdings of our own courts, the Louisiana court would not have been bound to apply the Texas law even though the case did present a compensable accident under the laws of Texas. But all these arguments have been merged into the final Texas award which cannot be disturbed and which under the Constitution prevents Plaintiff from again seeking redress for his injury.

IV

Only three grounds have been recognized as valid excuses for failure to apply the full faith and credit clause of the Federal Constitution in enforcing a foreign judgment. These are (1) lack of jurisdiction in the Court where the judgment was rendered, (2) the violation of a fixed public policy of the second state and (3) fraud in securing the original judgment. See American Jurisprudence Volume 31, Sections 533-557. These were the types of cases referred to by the United States Supreme Court in the Alaska Packers case as will be readily seen from an examination of the decisions cited by the Court in that case.

Plaintiff in the present suit cannot argue seriously that his second claim for compensation falls within any of the three exceptions mentioned above. It is respectfully submitted, therefore, that this Court is in error in awarding him a second judgment for compensation; and it is further submitted that in granting such an award, the Court is squarely opposed to the decision of the Louisiana Supreme [fol. 189] Court in Richardson vs. Helis, 192 La. 856, 189 So. 454 wherein the Court recognized that it was bound to recognize a valid decree of the court of a sister state.

V

The Court's decision did not mention or consider the effect of its ruling upon the Defendant in the present case. It was pointed out in Defendant's original brief that a successful defense of the Louisiana suit on its merits could not possibly relieve Defendant of its obligation to pay the Texas award; or if this Court had awarded Plaintiff only

100 weeks compensation, Defendant would still be bound to pay the full amount of $3,000.00 provided by the Texas award.

The effect of the Court's present ruling is that an employee in this type of case will always be granted two chances or two separate days in Court whereas the defendant employer can never have but one. It is submitted with great earnestness that this is the exact situation which the framers of the Federal Constitution were attempting to deal with and prevent.

Wherefore, Defendant prays that this application be deemed good and sufficient and that after due proceedings had, a rehearing be granted in the above entitled cause and that finally the original decision and decree of this Court be rescinded; that the judgment of the District Court be reversed and that judgment be rendered herein in favor of Defendant dismissing Plaintiff's suit.

Respectfully submitted, /s/ Liskow & Lewis, Attorneys for Defendant.

[fol. 190] I Certify that the above and foregoing application is filed in good faith and not for the purpose of delay and that a copy thereof has been mailed to Messrs. Hawkins & Tritico, Attorneys for the Plaintiff and Appellee.

Lake Charles, Louisiana, this 16th day of October, 1942.

/s/ Austin W. Lewis.

[fol. 191] COURT OF APPEAL, FIRST CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—November 18, 1942

Rehearing Refused.

Baton Rouge, Louisiana, Nov. 18, 1942.

(Signed) J. Hugo Dore, C. Ellis Ott, Sam A. LeBlanc, Judges.

[File endorsement omitted.]

[fol. 192] IN COURT OF APPEAL

NOTICE OF APPEAL—Filed Nov. 27, 1942

To Sullivan H. Hunt, Through His Attorneys, Hawkins & Tritico, Esqs., Lake Charles, Louisiana:

Notice has been received from the Clerk of the Court of Appeal for the First Circuit that defendant's application for rehearing was refused by that Court on November 18, 1942.

You are hereby notified that pursuant to Section 2 of Act 191 of the General Assembly of Louisiana for the year 1898, and in accordance with the rules of the Supreme Court of Louisiana, defendant, Magnolia Petroleum Company, within the time allowed by that statute, will apply to the Supreme Court of Louisiana for writs of certiorari and review for the purpose of having the Supreme Court review and determine questions of law involved in this case.

Yours respectfully, Liskow & Lewis, By /s/ Cullen R. Liskow, Attorneys for Magnolia Petroleum Company.

cc: Hon. Mark C. Pickrel, District Judge; Clerk of Court of Appeal, Clerk of District Court, Calcasieu Parish, Louisiana.

[fol. 193] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 194-195] Judges's Certificate to Clerk omitted in printing.

[fol. 196] SUPREME COURT OF LOUISIANA

STATE EX REL. MAGNOLIA PETROLEUM COMPANY

VS.

SULLIVAN H. HUNT

PETITION FOR WRITS OF CERTIORARI AND REVIEW

[fol. 197] To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Magnolia Petroleum Company, a Texas corporation,

appearing through undersigned counsel, with respect shows:

I

That this application is made by Relator for review of a judgment of the Louisiana Court of Appeal, First Circuit, which refused to recognize a prior decree of a Texas tribunal of competent jurisdiction involving exactly the same cause of action as the instant case as being a bar to Plaintiff's demands herein and thereby violating Relator's rights under the full faith and credit clause of the United States Constitution.

II

That on December 18, 1940, Sullivan H. Hunt instituted suit against your Relator in the Fourteenth Judicial District Court of Louisiana in and for the Parish of Calcasieu, the suit being entitled "Sullivan H. Hunt v. Magnolia Petroleum Company, et al", bearing No. 20,981 on the docket of said Court.

III

That in said suit, the said Sullivan H. Hunt demanded a judgment for compensation in the total amount of $8,000.00, payable at the rate of $20.00 per week for 400 weeks, subject to an admitted credit of $1,470.00 representing compensation theretofore paid.

[fol. 198]

IV

That it was alleged in Plaintiff's petition that while working in an oil field near the Town of Kermit in the State of Texas, plaintiff suffered an accident on May 25, 1939, which resulted in injuries to his right leg; it having been alleged by Plaintiff that he was employed for such work under a Louisiana contract.

V

That in opposition to Plaintiff's demand for compensation, Relator filed (among other defenses not being urged in this Court) an original and an amended exception of res adjudicata based on the facts and legal rules and principles hereinafter set forth; the said exceptions forming the basis of the assignment of errors presented with this petition.

VI

That in said original and amended exceptions of res adjudicata Relator alleged, and on the trial of said exceptions proved, that the Plaintiff, Sullivan H. Hunt, voluntarily applied to the Industrial Accident Board of the State of Texas for compensation for the said injuries suffered by him at Kermit, Texas, on said date of May 25, 1939, and that as a result of said application Plaintiff was granted an award or judgment of compensation by the said Industrial Accident Board of the State of Texas on December 3, 1940; the said cause being entitled "Sullivan H. Hunt v. No. Y-16,695, Magnolia Petroleum Company, et al", on the docket of said Board.

[fol. 199]

VII

That in connection with said exception of res adjudicata Relator proved that the Industrial Accident Board of the State of Texas is a body of original jurisdiction for compensation claims in Texas and that an award or judgment of said Board becomes final within twenty (20) days from the date thereof.

VIII

That in connection with said exception, your Relator further proved that the award to Plaintiff of the Industrial Accident Board of the State of Texas, dated December 3, 1940, is and was at the time of the filing of this suit final and unappealable and that said award, therefore, constituted a final and binding adjudication of the rights of both said Plaintiff and Relator with respect to the said accident of May 25, 1939.

IX

That further in connection with said exception, Relator proved, without opposition from the Plaintiff, that the Texas compensation statute is elective rather than compulsory and that Plaintiff voluntarily signed the application forms and claim filed with said Board and generally acquiesced in the proceedings had before said Board and its award.

X

That the said exception was tried and was submitted to the Honorable Mark C. Pickrel, Judge of the Fourteenth

Judicial District Court of Louisiana in and for the Parish [fol. 200] of Calcasieu on March 15, 1941, and after consideration of oral arguments and briefs, judgment was rendered by the District Court (with written reasons being assigned) on May 21, 1941, overruling said exception and directing that the case proceed to trial.

XI

That thereafter under full reservation of its rights under the said exception, Defendant filed an answer to Plaintiff's petition and the said case was tried on its merits on November 3, 1941; that after consideration of oral arguments and briefs, judgment was rendered by the Honorable Mark C. Pickrel, Judge, on March 11, 1942, in favor of Plaintiff and against Defendant, decreeing that Plaintiff was entitled to receive the maximum compensation of $8,000.00, subject to credit for the amount theretofore received by Plaintiff.

XII

That your Relator herein duly moved for and perfected an appeal to the Louisiana Court of Appeal for the First Circuit and after consideration of oral arguments and written briefs, judgment was rendered by the Court of Appeal on October 8, 1942, in favor of Plaintiff and against your Relator, affirming the judgment of the District Court.

[fol. 201]

XIII

That on October 19, 1942, application for rehearing was duly made to and filed with the said Court of Appeal and on November 18, 1942, said application for rehearing was refused by that Court without any reasons being given therefor.

XIV

That Relator's exception of res adjudicata was based on the provisions of Article 4, Section 1 of the United States Constitution which was specifically pleaded in bar of Plaintiff's suit and which provides as follows:

"*Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.* And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof"; (Italics added);

this Section being generally referred to as the "full faith and credit clause" of the Federal Constitution.

XV

That Relator alleged and argued in the District Court and the Court of Appeal that the final and unappealable judgment of the Industrial Accident Board of the State of Texas, rendered in favor of the Plaintiff and against Relator and its insurer was a complete satisfaction of Plaintiff's cause of action for the said injury of May 25, 1939.

[fol. 202]

XVI

That Relator's position in urging said exception of res adjudicata is supported by fundamental rules of constitutional law and by well reasoned authority from other jurisdictions, an example being in the following expression of the Appellate Court of New Jersey in the case entitled "Martinez v. W. G. Fritz Company, Inc.," 165 Atlantic, 875:

"The accident occurred September 5, 1930, proceedings were promptly instituted in New York, petitioner appearing there, he was paid compensation concurrently, and, on May 12, 1931, the compensation was ordered paid to date and the case closed out 'in full settlement of the claim'. Ten days later he filed his New Jersey petition for the same accidental injury. This was dismissed and is now on appeal, the above facts having been proven before the New Jersey Bureau."

. . . . . .

"*Obviously, petitioner cannot receive two satisfactions for the same cause of action. Hence, the question of whether or not the New Jersey Bureau has jurisdiction is immaterial.* Assuming, for the sake of argument, that it has, the objection to its now re-determining the question as to compensability goes deeper than that. *The New York judgment proven here constitutes res adjudicata here under the full faith and credit clause of the Federal Constitution (article 4, Sec. 1), quite regardless of whether the New York proceedings were those of a court of general jurisdiction or a mere statutory tribunal of inferior jurisdiction.* Smith v. [fol. 203] Swart, 103 N. J. Law, 150, 134 A. 755; Amerman v. Briggs, 50 N. J. Law, 114, 11 A. 423. *Since such New*

York Judgment has been satisfied, there is a complete bar. Traflet v. Empire Life Insurance Company, 64 N. J. Law 387, 46 A. 204, Kennealy v. Leary, 67 N. J. Law, 435, 51 A. 475." (Italics ours.)

XVII

That the Louisiana Court of Appeal expressly recognized the validity of the award made by the Industrial Accident Board, and in said opinion, the said Court found as a fact that the said award was a final and unappealable decree of a Texas tribunal of competent jurisdiction to which Plaintiff was a party; the finding and conclusion of the said Court of Appeal on the effect of the Texas award was expressed in the following language (page 7 of opinion):

"We do not agree with the learned district Judge to the extent that because the contract of employment arose in Louisiana the Industrial Accident Board of Texas was without jurisdiction to entertain the claim for compensation, nor can we agree that plaintiff did not at least voluntarily participate in the proceedings before that Board and thereby became a party to the same. It is conclusively shown that the Texas law vests the Industrial Accident Board of the State of Texas with jurisdiction in cases of compensation involving injuries sustained by employees in that State and who are even only temporarily employed therein, and it is conceded that all proceedings before that Board and the awards made by it have the same force and effect as proceedings before and judgments rendered by courts of competent jurisdiction in that State. The vital and important question therefore is what effect must the Louisiana Court give to the ruling under which the award was made."

[fol. 204]

XVIII

That in spite of its holding that the Texas award was in all respects valid and binding upon Plaintiff, the Court of Appeal refused to apply the provisions of the full faith and credit clause of the United States Constitution and to recognize that said constitutional provision was a complete bar to Plaintiff's present suit which is based on the same cause of action; and said Court, therefore, awarded to Plaintiff a second judgment based on the identical injuries received by him at Kermit, Texas, and for which he had already been awarded compensation.

XIX

That the Texas award in Plaintiff's favor does not violate any public policy of Louisiana and since it is conceded that it was rendered by a tribunal having jurisdiction over the claim and that Plaintiff was a party thereto, no legal justification can be found for the refusal to recognize the validity of that judgment under the full faith and credit clause of the Federal Constitution.

XX

That the decision of the Louisiana Court of Appeal against your Relator was pitched almost entirely upon dictum in a decision of the United States Supreme Court in Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532, 55 Sup. Ct., 518, to the effect that [fol. 205] there are "some limitations" upon the extent to which even a judgment of a State must be enforced in another State *in contravention of the statutes or policy* of that second state; but it was not even suggested in the present case that a judgment being different only in a matter of dollars and cents would contravene the statutes or any public policy of Louisiana.

XXI

That the decision of the Court of Appeal in the present case is squarely opposed to a prior decision of this Honorable Court in Richardson v. Helis, 192 La. 856, 189 So. 454; and in the Helis case this Court held that the merits of a suit on which a foreign judgment was obtained cannot be inquired into by the Louisiana Courts, the rule being stated on Page 459 of 189 So. to be as follows:

"The defendant had the right to defend the merits of the case in California and, having failed to avail himself of this opportunity, after being personally served with citation, he is now barred from attempting to do so, as the California final judgment is entitled to the same full faith, effect and credit in Louisiana, under the Article of the Constitution of the United States and the Act of Congress as it would have in California."

XXII

That under the rule announced in the Helis case cited in the preceding paragraph, Plaintiff was bound to have

submitted to the Texas Board all demands, whether for Louisiana or Texas compensation, and the fact that he may have failed to assert his rights under Louisiana law before [fol. 206] that tribunal does not allow him to file a second suit in Louisiana based on the same cause of action in violation of the full faith and credit clause of the Federal Constitution.

XXIII

That in view of the grave constitutional question which has been presented by the refusal of the Court of Appeal to apply the provisions of the full faith and credit clause to protect the rights of your Relator, it is respectfully submitted that the said judgment should be reviewed by this Honorable Court under the provisions of Section 2 of Act 191 of the General Assembly of Louisiana for the year 1898 and under Section 5 of Rule XIII of this Honorable Court.

XXIV

That is connection with this application and as required by said statute and rules of this Court, there are attached the following:

(1) Statement or assignment of errors alleged to exist in the decree complained of.

(2) A copy of Plaintiff's petition in said cause.

(3) Copies of original and amended exceptions of res adjudicata filed on behalf of your Relator.

(4) Copies of exceptions to the jurisdiction ratione materiae and of no right of action and of a plea of estoppel; all filed on behalf of your Relator but which are not presented to this Court for consideration on the present application.

(5) Copy of answer filed on behalf of Relator.

[fol. 207] (6) Copy of the judgment of the District Court overruling Relator's exceptions.

(7) Copy of the judgment of the District Court on the merits in favor of Plaintiff and against Relator.

(8) Copy of the opinion rendered by the Court of Appeal in favor of Plaintiff affirming the judgment of the District Court.

(9) Original of notice by Clerk of Court of Appeal showing refusal of application for rehearing; this petition con-

taining the necessary declaration that a rehearing was applied for and refused.

(10) Copies of briefs filed by all parties in the Court of Appeal.

(11) Copies of notices given to Counsel for Respondent, Sullivan H. Hunt, to the District Court and Court of Appeal of Relator's intention to apply for writs of certiorari and review, together with attached certificate showing the service of such notices.

XXV

Relator respectfully requests that should this application be granted, oral argument be allowed before this Honorable Court.

Wherefore, Relator prays that upon consideration of this petition a writ of certiorari and review be issued herein directed to the Court of Appeal for the First Circuit of Louisiana pursuant to the provisions of Section 2 of Act 191 of the General Assembly of Louisiana for the year 1898.

Relator further prays that upon the granting of said writs the record herein and the questions of law involved be reviewed and determined by this Court; and that the [fol. 208] judgment of said Court of Appeal rendered herein be reversed and that judgment be rendered in Relator's favor and against Plaintiff, Sullivan H. Hunt, maintaining Relator's plea of res adjudicata and the other defenses herein urged and applying the full faith and credit clause of the Federal Constitution.

Relator finally prays for all orders and decrees necessary in the premises; for full, general and equitable relief.

Magnolia Petroleum Company, Relator, by Liskow & Lewis, by (Signed) Cullen R. Liskow, Its Attorneys.

STATE OF LOUISIANA,
Parish of Calcasieu:

Before Me, the undersigned Notary Public, on this day personally came and appeared Cullen R. Liskow, who, being duly sworn, deposes and says:

That he is one of the attorneys for Relator, Magnolia Petroleum Company, in the above and foregoing mentioned suit.

That the allegations contained in the foregoing petition for writs of certiorari and review are true and correct.

That Magnolia Petroleum Company is a Texas corporation and no officer thereof is now present to verify the foregoing petition.

[fol. 209] That notice of intention to apply for this writ of certiorari and review has been given to Respondent through his attorneys of record, has been filed with the Clerk of the Louisiana Court of Appeal, First Circuit, has been filed with the Clerk of the District Court, Calcasieu Parish, Louisiana, and has been delivered to Hon. Mark C. Pickrel, District Judge, all as shown by copy of said notice with certificate thereon hereto attached.

(Signed) Cullen R. Liskow.

Sworn to and subscribed before me, Notary Public, this 27 day of November, 1942. (Signed) Rena McKinley, Notary Public. (Seal.)

[fol. 210] Assignment of Errors

(1) The Court erred in failing to apply the provisions of Article 4, Section 1 of the Constitution of United States, which reads:

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

(2) The Court erred in failing to decide and hold that the judgment and award granted by the Industrial Accident Board of the State of Texas on December 3, 1940, in proceedings entitled "Sullivan H. Hunt v. No. Y-16,695, Magnolia Petroleum Company, et al", on the docket of said Board settled and determined all of the issues and claims as between the parties growing out of injuries suffered by the said Sullivan H. Hunt at Kermit, Texas, on or about May 25, 1939.

(3) The Court erred in failing to give full faith and credit to the judgment so rendered in Texas as required by the Federal Constitution.

I Hereby Certify that a copy of the foregoing petition [fol. 211] for writs of certiorari and review with the at-

tached assignment of errors has this day been mailed to the Attorneys of Record for Sullivan H. Hunt.

(Signed) Cullen R. Liskow.

Lake Charles, Louisiana, November 28, 1942.

[fol. 212] In Supreme Court of Louisiana

No. 36,936

Sullivan H. Hunt

vs.

Magnolia Petroleum Company

Order Denying Petition for Writs of Certiorari and Review—January 5, 1943

In re Magnolia Petroleum Company applying for Certiorari (or Writ of Review, to the Court of Appeals, Parish of Calcasieu.

Writ refused—See no error of law in the judgment complained of.

[fol. 213] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 214] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 215] In the Supreme Court of the United States

Magnolia Petroleum Company, Petitioner,

vs.

Sullivan H. Hunt

Stipulation of Counsel as to Proceedings to be Included in Record

It Is Hereby Stipulated by and between Counsel for Petitioner, Magnolia Petroleum Company, and Counsel for Respondent, Sullivan H. Hunt, pursuant to Section 8 of Rule 38 of the Rules of the Supreme Court of the United

States, that there shall be omitted from the printed record all matter not essential to a consideration of the questions [fols. 216-218] presented by the writ of certiorari and to that end it shall be necessary that the record consist only of the following:

* * * * * * *

[fol. 219] This stipulation is signed by attorneys for Respondent, Sullivan H. Hunt, solely for the purpose of minimizing the record to be filed in the Supreme Court of the United States; said attorneys reserving and maintaining their denial that there is any Federal question presented.

Lake Charles, Louisiana, February 9, 1943.

Liskow & Lewis, by Cullen R. Liskow, Attorneys for Petitioner, Magnolia Petroleum Company, Defendant in State Court. Hawkins & Tritico, by Griffin T. Hawkins, Attorneys for Respondent, Sullivan H. Hunt, Plaintiff in State Court.

[fol. 220] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 3, 1943

The petition herein for a writ of certiorari to the Court of Appeals of the State of Louisiana, First Circuit, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.